THE PRACTICK PART OF THE LAW:

Shewing the Office of a

COMPLEAT ATTORNEY

In the full prosecution of any Action, whether Reall, Personall or Mixt; (from the very Originall to the Execution) in all Courts: With the exact Fees of all Officers and Ministers of the Courts.

TOGETHER

With speciall Instructions for the Solicitation of any Cause in *Chancery*, or else where, relating to the present Government; being usefull for all men.

The fourth Impression corrected and amended. With an exact Table, wherein are contained all the Principall Matters in the whole Book.

LONDON,
Printed by *Tho. Roycroft*, for *H. Twyford*, and are to be sold at his Shop in *Vine-Court*, *Middle-Temple*, 1656.

the Office of an Attor-
ney, and a Guide for
Solicitors in all the
Courts at Westminster;
with their Proceedings
in any Action Real,
Personal, or Mixed.
As also the Practice of
the Courts in the City
of London, Courts of Ad-
miralty, Ecclesiastic-
al Courts, and other In-
ferior Courts in the Cou-
try. 5th Edition, enlarg-
ed. Octavo. 1724. - Prac-
tick Part of the Law, 4th
Edition, 1711. - Practick
Part of the Law, Preced-
ents in English, 1653. - This
is called the Compleat
Attorney, at the head

TK
C7372
Wm. Green. 1853.

TO THE READER.

Reader,

HAving observed the many Errours daily committed through the mistake of the nature of the Action to be sued, and consequently, as well the misgrounding of the Action, as the undue prosecution thereof, to the utter losse of many a Cause, hath put my intentions on work to give thee some light in such waies, where either thou dost voluntarily go to pursue thy right, or art Involuntarily driven to defend thy right: *To that purpose was this Composure undertaken, wherein thou shalt find the whole progresse of the* Law *in the Practicall part: So that whether thou hast businesse of thine owne*

or on the behalf of another, hereupon all occasions, thou mayest find Instructions for a due and full prosecution thereof; there being scarce any Action, Reall, Personall, *or* Mixt, *in what Court soever, but its Nature, Progresse, Judgment, and Execution is here explained, with the duty of all Officers*, Judiciary, *and* Ministeriall; *as also the justifiable Fees and Allowances of the* Prothonotaries, Masters *of Officer*, Secondaries, Clarks, Attorneys, Sheriffs, Under-Sheriffs, Bayliffs *of Franchises, and prescribed Liberties; the Practice of the high Court of* Chancery, *the Fees of the* Six Clarks, &c. *All which being methodically disposed, with an exact Table to every particular, will, I hope, render thee a benefit worthy of thy kind acceptance.*

Farewell.

The Compleat Attorney.

Being full and exact directions for all manner of Proceedings at Law, in all Courts whatsoever: Together with all Fees incident thereunto.

THE Office of an Attorney requires much knowledge both of the Theorique and Practick parts of the Law. The one is to be gained out of the body of the Law, and cannot be expected to be ascertained in this small tract.

For the better enabling of him to the later is this ensuing Discourse intended, wherein we shall begin with the Court of Common-Pleas, as being of the largest Extent, in relation to the multiplicity of Actions, both real, personal, and mixt, properly incident to that Court, wherein all persons of the Nation, either as Plaintiffs or Defendants, are more or lesse concerned.

This Court consists of a chief Justice, and three other Judges.

The Subordinate Officers are;

The *Custos Brevium*, or Keeper of the Writs.

Three Prothonotaries (one of which was antiently incident to the *Custos Brevium* for the time being) who by themselves and their Clarks, draw all pleadings and enter them, and exemplifie and record all common Recoveries.

The clark of the Warrants, who entreth all VVarrants of Attorney, and inrolleth all deeds acknowledged before the Justices of the Court.

Philizers, who make all manner of mean proceſſe upon originall Writs before *appearance.*

The Clark of the Eſſoynes, who doth enter the Eſſoynes and exceptions in all actions wherein Eſſoines lye, and prepareth and marketh all the Rolls uſed for the court.

The clark of the Outlawries who maketh the *Capias utlegatum*, upon the return of the exigents brought in unto them. This Office is properly incident to the Attorney Generall for the time being.

The clark of the Superſedeas, who makes VVrits to ſuperſede the Outlawing of perſons, granted by Letters Patents under the great Seal of *England.*

The Exigenters, who are in numbet, and make the VVrits of Exigents and Proclamations, in order to Outlawry upon the *plures capias*, brought in unto them.

The clark of the Juries, who makes the VVrits of *Habeas corpora* and *Diſtringas Jur.* for the tryall of Iſſues.

The Chyrographer, who doth make the Indentures of Fines levyed, and hath many ſubordinate Clarks for the ſeverall Counties where the Lands lie.

The Clark of the Kings-ſilver, ſo antiently called, who doth enter on record the Money which the State is to have upon Fines, for the Poſt-Fines, according to the yearly value of the Land, as the ſame is rated on the Writs of Covenant.

The clark of the Errors, who makes all *Superſedeas* upon Writs of Errour, and doth tranſcribe the Records out of the Treaſury, belonging to the Common Bench, into the Upper Bench.

The Keeper of the Treaſury, who hath the keeping

of the Rolls entered of Record in the Court, and the making forth of Copies and Exemplifications thereof, and alſo of all records of *Niſi-prius*.

The Proclamator of the Court; the Keeper of the Court; The Office of the Inrollment of Fines and Recoveries erected by Statute.

Foure Cryers, or Tipſtaves, Subſtitutes to the Proclamator.

The Warden of the Fleet, who by himſelfe or his Deputy is to attend the Court, that Priſon being proper for all Commitments out of that Court.

The Pleaders are all Sergeants of the Coife, none under that degree being allowed to plead in that Court.

The Attorneys are very many, being not limited to any ſet number; antiently they were ſuch as either had ſtudied the Law for ſome years in ſome Inne of *Chancery*, where was uſually their reſidence, or had ſerved for the ſpace of 6. or 7. years, with ſome able Attorney of the Court, whereby they come to be very knowing in the Practiſe of the Court, the better to mannage their Clients cauſes with ability and integrity, to the honour of the Court, and their owne credit.

At the time of their being admitted Attorneys, there is an Oath adminiſtered unto them as followes.

YOu ſhall doe no falſhood, nor conſent to any to be done in the Court; and if you know of any to be done, you ſhall give knowledg thereof to my Lord Chief Juſtice, or other his Brethren, that it may be reformed. You ſhall delay no man for lucre or malice, nor ſhall encreaſe no fees, but be contented with the old accuſtomed fees. You ſhall plead no forreign plea, nor ſue no forreign ſuites unlawfully to hurt any man, but ſuch as ſhall ſtand with the order of the Law and your Conſcience. You ſhall

ſeale all ſuch Proceſſe as you ſhall ſue out of this Court, with the Seale thereof, and ſee the Kings Majeſtie, and my Lord chiefe Juſtice diſcharged of the ſame. You ſhall not wittingly nor willingly ſue, nor procure to be ſued, any falſe ſuite, nor give aid or conſent to the ſame, on paine of being expulſed from the Court for ever. And further, you ſhall uſe your ſelfe in the Office of an Attorney within the court according to your learning and diſcretion, ſo helpe you God.

Having taken his Oath, he is to pay the fees of Court incident thereunto, as followes,

Imprimis, to the Judges box, 20 *s.*

To the Secondary of the Chiefe Prothonotary, who giveth the Oath, 12 *d.*

To the Cryers, Court-Keeper, and other Officers 1 *s.*

Then muſt he have a note from the Prothonotary, in whoſe Office he intends to enter, directed to the Clark of the Warrants, which is uſually made, as follows,

Of the Term of St. *Hillary* in the year, 1651.

T.D. Gent. ſworn in Court the 10 day of *February*, in the ſelfe ſame Term, in the Office of Attorney of the Common-wealth of the Common Bench.

To which the Prothonotary ſubſcribeth his name.

Which note being delivered to the Clark of the Warrants, he enters the name into the Roll of the Attorneys names.

The Clarks of the Warrants hath for the entring thereof 4 *s.* and 4 *d.* for the Roll of that Terme, 4 *d.*

And ſo he ſtands charged to pay 4 *d.* for the future, ſo long as he continueth an Attorney of the Court for each Term.

The Attorney thus fitted for practiſe, he muſt be

very carefull in taking right and due inſtruction from his Client, and informe himſelfe of whatſoever is materially incident to his Cauſe; that ſo he may know what manner of Action is moſt proper to be brought on the behalfe of his Client; for a Cauſe once throughly weighed, and rightly grounded, goes on with a great deale of eaſe and ſatisfaction, both to the Attorney and Client.

The Attorney ought to be throughly verſed in the nature of all ſorts of VVrits, as in the Regiſter, Terms of the Law, and other Books now extant.

To begin with Actions of Debt.

FIrſt, you are to take notice of your Plaintiffe name, and of his cauſe of Action, whether it ariſe by Bond, or Bil, which are called Specialties, and otherwiſe for arrears of Rent, VVares, Cattell ſold, or any other Chattels, or for worke or ſervice done, &c. If by Bond or Bill, you muſt take an exact note of the Defendants name, together with his addition preciſely, as he is written in the Obligation or Bill, that ſo you may make your Originall and your other proceſſe to agree with the Obligation, otherwiſe it is Errour.

That done you muſt make a ſhort note to the Curſitor, if in debt, as follows;

London. ſſ. Command *I. C.* late *London.* Gent. otherwiſe called *I. C.* of *L.* in the County of *H.* Gent. that juſtly, and ſo forth, he render T. B. 40 *l. &c.* Originall returnable 15. dayes after *Eaſter.*

VVhich being done, you muſt carry your note or notes to the Curſitors Office, and deliver it to that particular Curſitor, who is for the County you lay your Action in, who maketh your Originall, and delivereth it you under Seale.

This Originall is your firſt Proceſſe, and is a Summons: and although it iſſue out of the *Chancery*, yet

it is made returnable before the Justices of the *Common Pleas* at a certain return: And between the Teste and return of the same (as also in all other ordinary Writs to be sued forth, and procured upon the same) must be 15. daies at the least.

Note, that this Writ may bear Teste out of the Term, because it is to be understood that the Court of *Chancery* is alwaies open.

All other Process sued forth at the court of *Common Pleas*, must bear Teste sometime within the Term, and in the name of the chief Justice of the same court for the time being, and one writ is to bear Teste from the return of another, as namely the *Capias* (which is the next Writ to the Originall in an action of Debt) from the return of the Originall, the *Alias capias*, from the return of the *Capias*, and the *Plures* from the return of the *Alias*, and the Exigent and Proclamation from the return of the *Plures*; and these are the severall Writs in order to an Outlawry.

The return of your Originall in debt is thus;

Pledges of prosecuting { *John Doe.* / *Richard Roe.* }

The within named *I. S.* hath nothing within our Bayliwick whereby he may be summoned.

The answer of *R. B.* and *I. S.* Sheriffs.

If there be two Defendants in the Originall, the return must be thus:

The within named *I. C:* and *D. L.* have nothing within our Bayliwick wherby they may be summoned. If there be more then two Defendants, then thus: *I. C.* and the rest of the Defendants within written, have nothing within our Bayliwick whereby they may be summoned.

Note, it is ſaid (within our Bayliwick) becauſe the action lies in *London*, where there are two Sheriffs, otherwiſe where there is but one Sheriff, you ſay (with my Bayliwick) and the like for all other cities that have two Sheriffs, and likewiſe the words, (the anſwer of) are intended onely where there is two Sheriffs, otherwiſe you barely recite the Sheriffs name and ſtile at the bottome of the back of the Writ.

Your Originall being thus made and returned, you muſt deliver the ſame to the Philizer of the county, city, or ſhire, where your action is laid, to have ſuch further proceſſe made thereon, either in ſuing to the Outlawry or otherwiſe, as the preſent Term wherein you ſue forth the ſame; ſhal by reaſon of the length or ſhortneſſe of the time allow, obſerving the former rule of fifteen daies betwixt the Teſte and the returne of every Proceſſe.

The Ordinary and uſuall proceſs thereupon with the Philizer, are thoſe formerly mentioned which he maketh upon the Originall Writ brought to him, for which you deliver him 4 *d.* as payable to the *Cuſtos brevium* for filing the Originall.

First, A *Capias*, for which you pay 10 *d.*
Secondly, An *Alias Capias* which coſts 6 *d.*
Thirdly, A *Plures capias*, for which you pay 6 *d.*

The returns whereof as followes.

The within named *I. C.* is not found within our Bayliwick.

And if more then two Defendants, then thus.

I C. and the reſt of the Defendants within written are not found within our Bayliwick.

The anſwer of R. B. *and* J. S. *Sheriffs.*

But if you intend not to ſue the Defendant to an outlawry, but that his body may be eaſily and readily arreſted, then you need not proceed further then

to the *Capias* onely, and deliver the ſame to the Under-Sheriff of the County, and procure a VVarrant thereupon, and get him arreſted by the Sheriffs Bayliffs, which is a great furtherance to your Clients cauſe, in relation to Tryall, and procuring Judgement.

Note that you are to pay 4 *d.* as a *poſt-diem* for each of the aforeſaid Proceſſe, which you bring not into the Philizer by the day of the return.

The two cheife Termes wherein to commence Suits to the Outlawry, are *Eaſter* and *Michalemas* Termes, they having in them the moſt returns, for if you begin in *Eaſter*, you ſhall Outlaw the party, if he appear not in *Michaelmas* Terme next following, and if you begin in *Michaelmas* Terme, you ſhall doe the like in *Eaſter* or *Trinity* Terme then next following.

Note that you may have an Originall VVrit made returnable of a precedent Terme, upon bringing a Note to the Curſitor within the firſt week of the following Terme, but if you ſlack that time, you loſe your advantage.

Antiently the courſe hath been, that if an Originall VVrit be made againſt a Knight, Eſquire, Gentleman of worth, or other ſubſtantiall Free-holder, that hath ſufficient Lands and Tenements in the ſame County where the Action is laid. then ought a Summons to be returned by the Sheriff of the County, who is to execute it: And you cannot return that Originall of Courſe by the return of (having nothing, *&c.*) For otherwiſe the Defendant, if he have ſufficient in the ſame County, and he be returned, (to have nothing, *&c.*) may bring an Action of the Caſe, for diſabling of him in his Eſtate, againſt the Attorney for the Plaintiff, or againſt the Under-Sheriff of the County, who ſhall make ſuch return,

to disable him upon a Summons; if he appear not, you proceed by *Pone*, and so to a distress, and if he appear not upon the *Distringas*, you have an *Alias distringas*, and so distress upon distress, untill he appeare; but this manner of proceedings by way of Summons hath not been used of late.

Upon the making and suing forth of the Originall Writ, if the debt or damages therein specified do exceed forty pounds: Then there is a certain Fine due for the same, to be paid formerly to the King, now to the State as followes;

Imprimis, from forty pounds to a hundred marks, paies 6 *s.* 8 *d.*

From a hundred marks to a hundred pounds, paies 10 *s.* 0.

From a hundred pounds to two hundred marks, paies 13 *s.* 4 *d.*

From a hundred thirty three pounds six shillings and eight pence, to a hundred sixty six pounds thirteen shillings and four pence, paies 16 *s.* 8 *d.*

From a hundred sixty six pounds thirteen shillings and foure pence, to two hundred pounds, paies 20 *s.* 0.

And so consequentiy for every hundred marks more, paies, 6 *s.* 8 *d.*

And for every hundred pounds more, paies 10 *s.* 0.

If you begin in *Easter* Term, you may procure your *Capias* and *Alias capias*, returnable in *Trinity* Term, and in *Trinity* Term sue forth your *Plures capias*, Exigent, and Proclamation; if in *Michaelmas* Term, you may sue forth the Originall *Capias*, and *Alias capias* returnable the same Term; and a *Plures capias* returnable in *Hillary* Term then next following, and in the same Term procure your Exigent and Proclamation.

Note, that if you lay your action in *London*, the party will be the ſooner outlawed, in reſpect of the Huſtinge, being oftner there then elſewhere.

Now if the party have ſued out his Originall in *London*, and the party live elſewhere, and that he would have him more ſpeedily arreſted then by way of Outlawry upon the return (of the parties not being found, *&c.*) by the Sheriff, he may have a *Teſtatum* into the county where he liveth, to arreſt him there; the fee of which Writ is twelve-pence.

All the Writs before mentioned muſt be filed with the *Cuſtos brevium*, either by your ſelf or the Philizer, or elſe there will be Error in the proceedings.

The *Plures Capias* being orderly procured, ſued forth and returned, muſt be delivered to the Exigenter of the county where the action is laid, and he will make an Exigent, and proclamation thereupon.

The Exigent and Proclamation muſt be delivered to the under-Sheriff of the ſame county, where the Defendant dwelleth, to be executed according to the forme of a Statute, in that caſe made and provided, and according to the tenure and forme of the ſaid Writ.

The charges of a Suit to the Outlawry are as followeth.

Doe againſt *Roe.* *Eaſter Term*, 1651.

	l.	*s.*	*d.*		
For the Fine to the State,	0	10	0		
For the Original, *Poſt diem*, and Entry,	0	1	5		
For the *Capias*, Seale and *Poſt diem*,	0	1	9	*s.*	*d.*
For the *Alias capias*, Seal, & *Poſt diem*,	0	1	5	17	11
For the Attorneys fee,	0	3	4		

Trinity

Trinity Term following.	*l. s. d.*	
For the *Plures capias*, Seale and *Post diem.*	0-1-5	
For the Warrant of Attorney,	0-0-4	*s. d.*
For the Exigent and Seale	0-1-7	8—9
For the return thereof,	0-1-0	
For the Attorneys fee,	0-3-4	
The sum totall is	1-6-8	

If the Exigent be against several Defendants living in severall Counties, severall Proclamations must go to the Sheriff of the severall Counties, which will increase the charge: And further take notice there must be of necessity five county-daies, between the Teste and the return of the Exigent, or else you must be necessitated to sue forth another Writ, called an *Allocatus*, from the said Exigenter, to be delivered to the said Under-sheriff, to the great hinderance and charge of the client; and your *Allocatus* must beare Teste with the return of your former Exigent, and be returnable the next return, after the fifth county-day and your Exigent and Proclamation must have one and the same Teste and return.

You must carefully examine all the aforesaid Processes, that there be no difference or variance either in the summes, names, or additions, from your Originall Writ, that so they may each warrant the other.

The same Term that you sue forth your Exigent and Proclamation, you must then file a Warrant of Attorney (for the Plaintiff who is your client) with the clark of the Warrants, in failer whereof you commit manifest Error in the prosecution of your

cauſe, to the great hinderance and hurt of your Client, and danger of your ſelfe, by incurring the forfeiture of ten pounds, by a Statute made in that behalf.

The forme of a Warrant of Attorney is as followes, and muſt be ingroſſed in Parchment.

London ſſ. *A. B.* puts in his place *C. D.* his Attorney, againſt T. F. lately of *London* Gentleman, otherwiſe called *T. F.* of *S.* in the Countie of *Glocester*, Gentleman, of a Plea of Debt: Thus upon ſpecialtie.

In Action of Treſpaſſe thus.

Dorſet ß. *G. W.* puts in his place *T. F.* againſt *I.* late of *Blanford* in the County aforeſaid, of a. plea of Treſpaſſe and the like in other Actions.

The Exigent and Proclamation being returned, you muſt then file the proclamation with the *Cuſtos Brevium*, and if you file the ſame or any other Writ there, before the return be paſt, or upon the return day, then you muſt pay nothing for filing the ſame; otherwiſe every writ payes 4 *d.*

Well-experienced Practiſers know how to ſave many of their *poſt-diems*, by having their writs made ready in an early manner.

In caſe of not filing your VVrit or VVrits, in or of the ſame Term they are rerurnable, they force you to pay when you file them with the *Cuſtos Brevium*, for the Poſt *Terminum* of them, which is 20 *d.* for every VVrit, every Term the ſame is unfiled, except Exigents, for which you pay onely one Poſt *Terminum*, which as aforeſaid, is 20 *d.*

It is very unſafe in relation both to your ſelfe and Client, to keep your VVrits unfiled (the filing of them

them being the ſubſtantiall warranty for the proceedings had upon them) leaſt a Caveat be obtained from ſome of the Judges in that behalfe, which is called a *Ne recipiatur.*

The Exigent being returned by the Sheriff of the County, and you being willing to procure proceſs of Outlawry againſt the Defendant to Arreſt him, upon the ſame he being outlawed, you muſt then carry the Exigent ſo returned, to the Clark of the outlawryes, for the time being, and he will make you a Writ or writs, into any County you ſhall deſire him, where you can any wayes diſcover the Party to be, or any Eſtate of his, either in Lands or Goods, yea into ſeverall Counties at one time; becauſe thoſe writs are as well on the behalfe of the King, as for the Plaintiff.

There be two ſeverall writs of *Capias Vtlegat.* the one called a Generall *Capias Vtlegatum*, being for the apprehending of the body of the Defendant only: The other eſpeciall, being againſt his body, Lands, and Goods.

You having now the Exigent in your hands, ready to file, I thought fit to let you know the accuſtomed Fees for ſuing the Outlawry out, and Proceſſe thereon.

The Fees of the *Capias Vtlegat.*

THe filing of the Exigent with the Clark of the Outlawries in the ſame Terme it is returnable, payes 1 *d.*

If it be with a *poſt Terminum* payes 20 *d.*
The Generall *Capias Vtlegat* payes 10 *d.*
The Speciall payes 2 *s.* 4 *d.*
The Seale of either payes 1 *d.*
The fee of the Attorney ſuing it forth; 3 *s.* 4 *d.*

Severall ways there are to diſcharge and avoid the ſame as occaſion ſerves, whether the party be taken or otherwiſe.

The first and most usuall way is, to reverse it by Error, found in the returne of the Exigent, which may be committed many ways, and is not unfrequent, either by mistaking the County-dayes, in not allowing insufficient time between any of them, or in misnaming of the person, or omitting, or mistaking of the Sheriffs name to the same Writ or Returne, or by words which will bear no signification, or otherwise, as Experience and Practise will better instruct you: And secondly by any Error to be found in the Return of the Proclamation, which may be committed many wayes, as aforesaid.

Likewise for want of filing the Proclamation with the *Custos Brevium*, as also for want either of the Return or a due Return or Mis-entry, or mistakes, either in the Originall *Capias*, *Alias*, and *Plures*, afore recited.

For all which there must be diligent search with the *Custos Brevium*, or in the other Offices where the proceedings have been.

Upon the finding of any sufficient Error, either in those or any other the proceedings: Then the file of Writs, in which said matter of Error in Writ is filed, must be brought by the *Custos Brevium* into the open Court, there to be seen and perused by one of the Judges of the same Court, and the Errors to be allowed, or dis-allowed, according to his discretion and Judgment.

Upon Reversall of an Outlawry for want of Proclamation in all cases, or for any other default, if the debt or damage amount to 20 *l.* or above, there must be speciall Bayle entred by the Defendant with Sureties to answer to the Plaintiffs suite, and pay the debt and damage demanded, or yeeld his body to Prison, if the Defendant shall be condemned in the Action, which Baile must be taken out into the Re-

membrance

membrance in the ſame Prothonotaries office, where the ſame is reverſed. And then if the party outlawed be taken, and arreſted, or fear to be ſo upon notice of an Exigent againſt him, he may have a Writ of *Superſedeas* directed to the Sheriffe of the County where he is, or feareth to be taken, for his diſcharge, which writ is to be made and ſigned in the ſame Prothonotaries Office where the Outlawry was reverſed.

The Outlawry thus reverſed, the Defendant is bound by his Attorney to appeare, and to accept of a Declaration at any time within two Terms then next following after the ſaid reverſall, and then to anſwer according to courſe of Law.

Upon the reverſall of every Outlawry, the Attorney ought to have a note or Certificate thereof from the Prothonotary to the Clark of the Outlawry, that no further Proceſſe may be made againſt the Defendant upon the ſame, and to ſee the Outlawry Book diſcharged, for which he muſt pay 2 s. 8 d.

The Fees of the reverſalls according to the occaſions are uncertaine, but the uſuall and accuſtomed fees follow.

For ſearch and Copie of the Outlawry, 8 d.

For ſearch with the *Cuſtos Brevium* for every particular Term you need to uſe, 5 d.

For carrying the bundle of Writs to the Hall, 2 s. 9 d.

For putting in the Bayle. 6 s. 4 d.

To the Box. 1 s.

To the Prothonotary for entring the Reverſal upon inſufficiency of the Return, 8 s.

For the Judges Fee, 4 s.

To the Clark of the Outlawries for diſcharging the Book, 3 s. 6 d.

For the Superſedeas, 2 s. 7 d.

For the allowing thereof with the Sheriff, 2 s. 4 d.

An Outlawry alſo may be reverſed, although there be no Error in return or Entries of the Exigent or Proclamation: and although the Proclamation be filed with the *Cuſtos Brevium*, as namely, if that the ſame proclamation were not awarded according to the forme and effect of a Statute, in that caſe provided, into the County, and the Defendant named of the Pariſh where he had been reſident *infra annum & diem*, when next before the ſame Suite was begun, and commenced, or that the Deſendant be miſnamed therein, in his Surname, Degree or Myſterie. And this Reverſall is to be done by way of a Plea, drawn by a Clerk to that purpoſe; for which you ſhall finde precedents in the Book of Entries, to which pleas the Attorney Generalls hand muſt be procured; but this way as being both very troubleſome and chargeable, is much out of uſe.

An Outlawry may be alſo reverſed by the Kings Generall pardon, which is uſually granted at every Parliament, if ſo be the Defendant were oulawed before the day thereby limited, or by a ſpeciall pardon, which muſt be done by way of plea, and *Scire Facias* directed to the Sheriff of the ſame County, wherein the action was firſt layd: And if the Sheriff doe returue a *Scire feci* upon the ſaid *Scire facias*; then you ſhall need but one Writ of *Scire Facias*; if not, then you muſt have two returned with *Nihil*, &c. in this manner.

The within named A. C. (the Plaintiffe) hath nothing within my Bayliwick, by which I am able to make known unto him, nor is found in the ſame.

D. L. Knight, Sheriffe.

Theſe *Scire facias's* are to be drawn by the prothonotaries Clark, and then entred into a rememberance in the ſame Office, and a *Superſedeas* made, and a Certificate alſo made as above from the Prothonotary to

the Clark of the Outlawries, that from thenceforth no further Proceſſe may be made againſt the Defendant, and alſo entred upon Record.

And note in this caſe alſo, the Defendant muſt by his Attorney appear, and anſwer the Plaintiff in his Action, but no bail need be put in.

The Fees thereof.

For the Copie of the Exigent,	8 *d.*
The two *Scire facias's* and Seals,	5 *s.* 2 *d.*
The Returns thereof,	8 *s.*
The filing of them,	2 *d.*
The taking out in the Remembrance	1 *s.*
The Copies,	3 *s.* 4 *d.*
The Prothonotary,	5 *s.* 4 *d.*
The *Superſedeas*, and allowing thereof,	4 *s.* 11 *d.*
The Certificate,	1 *s.*
The Clark of the Outlawries,	2 *s.* 8 *d.*
The Attorneys Fee,	3 *s.* 4 *d.*

An Outlawry alſo may be reverſed by Writ of Error upon Error in the proceedings, as the want of the Warrant of Attorney, the not filing of the Originall; *Capias*, *Alias*, or *Plures*, and then your courſe therein followes;

In the firſt place you are to have a Copie of the Exigent, or *Capias Vtlegat.* which is to be carried to the Curſiter of the County where the action lies, and where the Defendant is returned outlawed, to have a Writ of Error made thereupon, which Writ muſt be brought under Seale to the Lord chiefe Juſtice of the Common Bench, or his clark of the Errors for the time being, with the copie of the Outlawry, and thereupon the clark of the Errors of the Common Bench makes a *Superſedeas* to the Sheriff of the County, where the Defendant either is, or fears to be arreſted, for his diſcharge, and from him pro-

cure a Certificate to the Clark of the Outlawries, (as formerly) the charge of the *Superſedeas* is 33 *s.* 4 *d.* beſides the ſearch and copie of the Outlawry. And in this caſe the Defendant by his Attorney muſt appear upon a new Originall ſued out by the Plaintiff within two Termes: And this is the moſt uſuall and ready way (though moſt chargeable) for diſcharging of an Outlawry (eſpecially in the Vacation) if the Defendant be either under arreſt, or fear to be arreſted; but baile muſt be put in, if the debt or damages amount to 20 *l.* as in the like caſes before recited.

It's requiſite in this caſe the Attorney ſhould take money of the Defendant for the Declaration, and his fee againſt the next Term, at the time of the delivery of the *Superſedeas* (eſpecially if the Defendant be not well known unto him) and a Warrant under his hand to appeare, plead, or confeſſe the Action: for many times the Attorney is put to a great charge and trouble to find out his Client.

Theſe are the generall and particular inſtructions and directions to ſue to the Outlawry, and to arreſt thereupon, and how to reverſe the ſame, both in the behalf of the Plaintiff and Defendant; beſides which there are other waies of ſuing by mean proceſſe, when they proceed no further then to the taking out of an Originall, and then make an arreſt upon the *capias*; or in caſe the partie cannot be taken before the return of the ſaid *capias*, then you may take out a *capias* by continuance, which coſts you 10 *d.* to the Philizer, and 7 *d.* for the Seale.

And having now dilated at large the ſeverall proceeds in Actions of debt, in order to Outlawry, or otherwiſe, and likewiſe the reverſal of ſuch Outlawries, whereby the Defendant comes to appear, it now reſts we ſhould ſhew how they may declare, and in what manner thoſe Declarations muſt be; But before we proceed

proceed ſo far, it will not be amiſſe to inſert ſome few rules or obſervations as a guide for the Attorney, both in the taking of inſtructions, and drawing his ſeverall Declarations in other perſonall Actions, as follow.

IN Actions of debt, either upon ſpecialty, as Bond or Bill, or for Rent arrear upon a demiſe by Indenture or otherwiſe, or upon an action of Covenant, you muſt have recourſe to the ſeverall writings, by which you warrant your ſaid Actions, and the circumſtance of time, either for the date of the ſaid writings, the place, the quantity of what Rent arreare, for what time, when commencing and ending, and what particular Covenant; if but one in an action of Covenant, you intend to inſiſt on for the laying of the breach aright, and likewiſe you muſt informe your ſelfe how your Client came to be Entituled to the Debt, whether as Obligee, or by ſome Aſſignment, by Letter of Attorney, or otherwiſe, as Executor or Adminiſtrator of the Obligee: And if for arreare of rent, whether the party came to it by mean aſſignment or reverſion, in which caſes you are to informe your ſelfe of the Attornment of the Tenant, and for what time the rent is arrear, and look what right the immediate Leſſor or Leſſees have; the ſame is in their Aſſignes.

If Rent grow due by Leaſe-paroll from year to year, which is ſo called, in reſpect there is nothing under hand and ſeale, but barely by word of mouth, to ſignifie the Demiſe, you muſt know the time of the Demiſe, aſcertaine the thing demiſed, the Terme, the Rent, and time of payment of it: the time of the Leſſees entry, and what Rent is arreare by the Defendant.

If in Debt upon an Award.

YOu are to informe your ſelves of the Arbitrators names, the time of the Award made, and what was awarded, and if you can get the Award it ſelf, it is far better.

Note, that if any under the age of one and twenty years, either in this or any other Action, commence Suit, he muſt come in by his Guardian in proper perſon to be admitted, which coſts two ſhillings the admittance; otherwiſe if the Defendant take notice of his Nonage, and that he appear not by Guardian, but otherwiſe, the Defendant may plead it in Bar to his Action.

And now take ſome few inſtructions in other Actions, as Treſpaſſe, upon Aſſault and Battery, falſe Impriſonment, *&c.*

In the firſt place, take notice of the time, or any time after the treſpaſſe done, before the Teſte of your Originall of the Treſpaſſe, by Aſſault and Impriſonment, and the place where (although I think neither of them Locall) together with the time the Party remaineth deceaſed, or impriſoned, and what it coſt him by way of Fine or otherwiſe, to be releaſed.

And note for the Aſſault of the Wife, Children, or Servant, the Father and Maſter, as well as the Servant, may bring an Action, for the loſſe or hinderance he receives thereby.

For Treſpaſs either in Cloſes, or Houſes, or chaſing of Cattell, or fiſhing where another man hath right, as followes: and firſt,

For breaking your Cloſe, the certainer you lay it, in naming the place, the time of the Treſpaſs done, and with what Cattell, and how long the Treſpaſs

continued

continued, and what corn was consumed and eaten up, or trodden down with the Feet, and what Grass, and of what value; and it were to be wished, in relation to the saving much charge, there were the same course taken in the Court of common Bench, that is done in the Upper Bench, that is, To ascertain the place of the Trespasse done, by giving it his particular name and bounds, which if done in the Declaration, would prevent pleading the common Barre and new Assignment, and this with much ease, by saying (The close of A. called C. in D. hee broke, &c.)

If any Trespass done for chasing of cattell, you must lay the time and place of chasing, worrying, and beating your cattell, what cattell, and how many they were, and what you were damnified by it, either in Ewes casting their Lambs, or being torne with doggs: Or Kine in loosing their Milke, casting their Calves, or Mares in the Losse of their colts, and the like.

An action of Trespasse also lyes against one, for the rescuing of his owne cattell out of your hands, in case you are driving them to the pound, for Trespasse, or otherwise, or in case he break the Pound, where you had impounded them, and drive them away; in both which cases, you must shew what right you had to take them, either as damage feasant, or that you did distrain them for Rent, or Services arrear.

If your Trespasse be, for taking away of Goods, or chattells, out of your ground or house (albeit money) and such things are commonly taken out of your house, they are to be named particularly, and their value, if money in a bagg, the particular Sum.

In case a man take away a Ward, an action lyes, wherein you must shew how the Plaintif came to have

Right to the Ward, which the Defendant detaineth, as if it be Knights ſervice by his Fathers holding of ſuch a Mannor of the Plaintiffs, the Lands he dyed ſeized of, &c. ſhew the manner of the Tenure, and that the Childs Father dyed in the Homage of the Lord, whereby the right of the Childs Marriage belongeth unto him: You muſt likewiſe know the time and place of taking him away, the age of the Ward, together with the Damage the Plaintiff ſuſtained.

If by Socage Tenure the Lands holden, then the next of kindred (to whom the Lands cannot deſcend) hath the like Action for his Ward, wherein hee muſt ſhew what he dyed of in Socage-Tenure, and of whoſe Mannor it was holden, together with the time the Plaintiff was ſeized of him, and the time, manner, and place of his taking away.

In an Action of Treſpaſſe for ſpoyling or turning your Water-courſe, you firſt ſhew how hee held the Water-courſe, from, where, and whither the water-courſe came, and that it had uſed ſo to come time out of mind; then what benefit it did the Plaintiff, as in making his Gronnds fertile, and for watering his Cattell, then how the Defendant did ſtop that Courſe and with what, and the time, by reaſon whereof, the Plaintiff hath loſt the benefit of it for ſuch a time, or if the Ground be overflowed by the like courſe, then ſhew how the Defendant, having ſuch a Water-courſe or Mills, lying neer the Plaintiffs ground, did open his Flood-gate and ſtopped the Water-courſe, and cauſed it to overflow the banks and drown the Lands.

In Actions of Account, take theſe enſuing.

IF an Action be brought for Arrearages of account, as where diverſe Reckonings are between two Per-

sons, and they account together, and upon that account the one is found indebted to the other; then know the time when the parties accounts were, and before whom, if they had any Auditors, and what the sum was, he was to account for, and the time when it was appointed to be paid by the Auditors.

If you charge any as Receiver for monies delivered, name the time when, and the place where, and the person that delivered it, and the Sum that was delivered; if he received it for the Rent of any thing, it is best to name the thing for what it was.

If you charge him as a Bayliff of Lands and Goods, shew from what time he hath been so of the things under his charge, and of all things he received, and how long since he was Bayliff.

If you charge him as Bayliff for any thing he hath sold for you, recite the thing to be accounted for.

Detinue.

IF you would bring an Action of Detinue for any thing that you have bought, cannot have, shew the time when you bought it, and what you paid, and the time for the delivery of it.

If you have delivered any thing to any man, and cannot have it again, you may have the like Action, knowing the value of the thing delivered, and to what use you did deliver it, and what time was appointed for the delivery of it, in case it be for writings, either upon the delivery, or that it came to the Defendants hands by chance, know the Date and the effect of the writing, the time when the Plaintiffe was possessed of it, and the time when the Defendant had it.

In Actions of the Case take these ensuing.

FIrst for Trover, which is the Recovery of Goods that come to any mans hands by chance or not in a warrantable way, know the nature of the goods, the value of them, the time and place when and where the Plaintiff was possessed of them, and how they came to the Defendants hands.

In an Action of the Case for words, if the Plaintiffe have borne any Office of credit, it would do well to recite it in the Declaration, and know the time and place of speaking the words, either to the Plaintiff, or of the Plaintiff, together with what other Circumstances may make to aggravate the words spoken by the Defendant.

In an action of the case, where felony is laid to ones charge, and the Party carried before a Justice of Peace, and so bound over to the Assizes; be sure in this case to take notice of the time when, and the place where he laid the Felony to him, and for what, and the Constables name that detained him, and the Justices name before whom he was brought, and the bayling or committing of him till the Assizes, the day of the Assizes held, and before whom the Copy of his Inditement, and his Acquittall thereupon.

Upon an escape upon a meane Processe.

IF the Bayliff have Arrested the Partie you are to sue upon meane Process, and either for favor or Bribes release him afterwards, so that you lose thereby the benefit of your Arrest. For Instructions,

Firſt know what cauſe your Client had againſt the perſon ſo Arreſted, and for how much money, and then ſet forth that for the recovery therof, he took out ſuch a Writ, returnable ſuch a time, directed to ſuch a Sherif, whereupon a Warrant was made and delivered to the Bayliff, by vertue whereof he Arreſted the Party, and ſuch a day releaſed him.

When you buy any thing upon Warranty, whether it be living Cattell, or any Chattels or goods that are warranted to be ſound, uſefull, and good, or that ſhould contain ſuch a number, either of loads, Pounds, weight or meaſure, and it holdeth not out ſo, an Action lyes in which caſe you muſt take notice of the quantity and quality of the thing, when ſold, and for how much the time and place, and that the Defendant did warrant it to be good, *&c.*

An Action likewiſe lyes againſt a Farrier, who for a Sum of money undertakes a cure, and wholly neglects it, or uſes contrary or poyſonous Medicines, whereby your Horſe dyeth or it worſted.

And likewiſe againſt a Smith that pricks your Horſe in ſhooing of him, whereby he becomes lame and unuſefull, and you loſe the benefit of his Service.

And where a Taylor taketh a quantity of cloath or Stuff to make a Suite, and curteth it ſo ſcanty as that it will not be for the Parties uſe.

And likewiſe for many other frauds and deceits, both in Shop-keepers, Artificers and men almoſt of all Myſteries and profeſſions.

Having thus given ſome breife directions what to take by way of Inſtruction and Information for the Attorney in behalfe of his Client, in order to drawing a Declaration, I ſhall now proceed to the ſaid declaration, Iſſue, and judgement, after appearance made by Super-

ſedeas to the Exigent, *or upon any other appearance upon arreſt had by vertue of mean Proceſs.*

THe Defendant appearing by putting in ſpeciall Bail to the Action, or otherwiſe upon the *Capias*, *Alias*, or *Plures* in the Philizers Office, where the ſame was ſued forth, or by *Superſedeas* to the *Exigent*, brought and allowed with the Sheriff, you muſt informe your ſelfe what Attorney doth appear for the Defendant; that done, you muſt declare either upon Bond, Bill, Indenture, Treſpaſſe, or otherwiſe, as your Caſe requires, allwayes obſerving this rule, that there be no diffierence between the Additions in the Writs or Summes therein contained, and your Declarations, for they muſt literally agree, the one being a Warrant for the other; for if there be variance, and the Defendant take notice of it, he may plead that variance in abatement to the Writ.

And for the drawing of thoſe Declarations, it requires the skill, ſtudie, and experience of an able Clark of the *Prothonotaries* Office, and ſome helps there have been formerly by Books of *Entries*, which being at an Extraordinary rate, have not been ſo much in uſe amongſt Attornies, but there is now a Book extant of ſelect *Preſidents* in *Engliſh*, for almoſt all Declarations, out of the Works of the learned *Prothonotary* Mr. *Brownlow*, and is of ſmall price, ſold by Mr. *Twiſord* in *Vine-court* Middle Temple, to which I refer you.

Having your Declaration drawn, you muſt enter it upon ſome Roll of the Court, in one or other of the *Prothonotaries* Office, either by your ſelfe or ſome Clark of the Office, who muſt ſee it put in the Docquet of that Office, and thereto put the number-Roll, and ſo enter it in your owne Docquet Book, and keep your number-roll, that ſo you may have recourſe to the

the Roll afterwards to enter up your Continuances, if the Cauſe continue above one Term before Judgment or Tryall had.

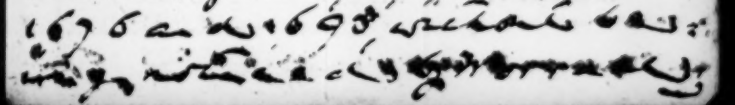
By the courſe of the Court, the Defendants are to anſwer the ſame Term they appear, if the Writs be returnable at the beginning of the Term, eſpecially in Iſſuable Terms, which are *Trinity* and *Hillary*, but in other Terms, if the action be not layd in *London*, the Defendants have for the moſt part imparlance, or time to plead till the next Term.

And here take notice, there be two kinds of imparlance, the one Generall, the other Speciall; after a generall imparlance had, the Defendant cannot plead in abatement to the VVrit, Excommunication, or the like, nor any priviledge out of another Court as a priviledged man.

But after a ſpeciall imparlance, many pleas may be pleaded, which after the generall imparlance cannot be allowed: If a ſpeciall imparlance be prayed, you muſt take for the entry thereof of the Defendants Attorney, the ſumm of 2 s.

If the Attorney for the Defendant upon receiving a Declaration do not crave that the condition of the Bond may be entred with the imparlance, and do not pay for the ſame, then he is debarred from pleading Conditions performed at any time after, without moving the Court, and paying 5 s. to the Judges Box.

Rules to anſwer muſt be entred in ſome of the Remembrances in one of the *Prothonotaries* Office, which is done breifly thus.



Hereford ff. *An imparlance between* A. B. *plaintiffe, and* L. D. *lately of* S. *in the county of* H. *Yeoman, otherwise called* A. B. *of* L. *in the county of* H. *Yeoman, Defendant of a plea of Debt.*

WHich being thus written, you put either in the Margent, or over head, your rule, which is unleſs the Defendant plead (within ſome few days) let Judgement be entred.

And theſe are entred either by the Secondary of the Office, where the Plaintiffs Attorney enters his cauſes on the Bill of pleas; or as before I have ſaid, by the Attorney or Clark for him, upon the common remembrance, for which there is 4 *d.* and upon the Expiration of the ſame rule, no plea being brought in, you muſt ſigne Judgement with the Prothonotary for want of anſwer.

If the Attorney for the Plaintiff do not declare againſt the Defendant upon his appearance within reaſonable time in the Term after the appearance made, then the Attorney for the Defendant, may alſo enter a rule in the Bill of pleas againſt the Plaintiff, to declare; and thereupon cauſe a *Non proſecutus* to be entred, which muſt be ſigned with the Prothonotary, and coſt given for the unjuſt vexation; for which coſts he ſhall have Execution againſt the Plaintiff. But if the Plaintiff ſue as Executor, or Adminiſtrator, he ſhall pay no coſts upon any Non-ſuit.

The imparlance is a time of leave, or licence given from one Terme to the Terme ſucceeding, by the Plaintiff to the Defendant, either to plead to his action brought, or to let it paſſe by default; and to that purpoſe the next Term after the imparlance had, as aforeſaid, the Attorney for the Plaintiff may call to the Attorney of the Defendant, to anſwer to the Declaration

Declaration, and if he do not plead in due time, give him rule to answer, which done and the Rule expired, he may enter Judgement as before is declared, either by *Nihil dicit*, for the Debt and costs, as is fit and very usuall in eases before expressed, if Debt.

Where the Defendant pleads generall Issues or pleas as is most usuall, and now directed to be done by a Statute lately made, wherby the speciall matter if any be, may be given in Evidence, as in an action of debt, that he owes nothing by the Country, *&c.* Or to Debt upon Bond, or Bill penall, that he did seale and deliver through threats, *&c.* Or by reason of hard Imprisonment, or that it is not his Deed, or that he hath performed conditions, or the like; or in action of the case, the generall issue not guilty for words, if upon promise, that he did not assume, *&c.* and for not guilty likewise in action of Trespasse or Battery. In these or the like cases of commonn Pleas or issues, there is no more requisite, but that the Attorney for the Defendant, do put his hand to the Plaintiffs Attorneys *Docquet* book, and that done, the Plaintiffs Attorney doth draw up the Plea, and make a copy of the Issue, and there delivereth it to the Defendants Attorney, who must receive it, and pay for entring such his plea, and for the Book, and then usually they give warning of a Tryall, unless they forbear Tryall the next Assizes.

But if the Defendant plead specially (which will not be so usuall as formerly) he is to bring it to the Plaintiffs Attorney under a Serjeants hand, and if the Plaintiff reply specially either by traverse or otherwise, the Replication is also to be under a Serjeants hand, and he is to give it to the Defendants Attorney.

So if the Defendant demurre to a Declaration, it is also to be brought under a Serjeants hand.

note. It's moſt generall, that the Jury ariſe out of that County and Town, or Pariſh where the action is laid for tryal, unleſſe it be removed by pleading, as where an Action is brought upon a Bond or Bill, and the Action laid in *Herefordſhire*, and the Defendant pleads Conditions performed, for the money paid at *Stow* in *Glocesterſhire*, according to the Condition, here the *Venire* ſhall not ariſe in *Hereford*, but in *Stow* in the County of *Glocester*, and thither ſhall the Record be carried to be tried.

note If an Action upon the Statute of *Hue and Cry* be brought againſt a Hundred for a robbery done within the Hundred, the *Venire* ſhall not ariſe in that Hundred, where the fact was done (for then they would be Judges in their owne cauſe, which is againſt common reaſon) but the *Venire* ſhall ariſe in the Hundred next adjoyning, and to this purpoſe the *Venire* muſt be awarded ſpecially, which is worthy obſervation.

note After the Iſſue joyned and entred, there may be ſeverall cauſes of challenge, as where the Defendant is of kindred to the Sheriff, either by blood, or marriage, the Plaintiff may pray the *Venire facias* directed to the Coroners, and if the Defendant agree thereto, it ſhall be accordingly. This muſt be ſpecially awarded upon the Iſſue roll, and in the awarding of it, it muſt be ſet down and derived how the Sheriff is of kindred, and then is the *Venire facias* directed to the Coroners, and this is called a challenge to the array.

note You cannot make a challenge to the Jury, till after they are called, and before they are ſworn, for afterwards it comes too late.

note If your tryall be by *Niſi prius* at the Aſſiſes in the Country, and your Jury appeare not full upon the Panell, the Plaintiffs Attorney may crave a *Decem*

tales

tales de circumſtantibus, ten of the ſtanders by to fill up the Jury, or a leſſe number, according as is requiſite, which *Tales* muſt be mentioned upon returne of the *Poſtea*, and the judgment thereupon on the Iſſue Roll.

And upon the Plaintiffs default, after the firſt Term the Defendants Attorney may bring the cauſe to tryall by *Venire facias* by *Proviſa*.

If at the tryall of any *Niſi prius*, the witneſſes of the Plaintiff or Defendant will not voluntarily appeare, without being ſerved with the proceſſe, to teſtifie the truth of their knowledge, in the matter or cauſe in queſtion, then you may have a *Subpœna ad teſtificand.* for the ſaid witneſſes out of the Prothonotaries Office, and therewith ſerve them, and compell them to appear, the fee whereof is, 2 s. 7 d.

When you proceed unto your tryall, you muſt, having entred as before your Declaration with the Iſſue joyned in the Prothonotaries Office, you muſt make out a *Venire facias* upon your Iſſue, and get it ſigned with the Prothonotary, and having ſealed it, you muſt get it returned by the Sheriff of the County or City, where you lay your Action, and upon return thereof, you muſt alſo ſue forth a *Habeas corpora*, which is made by a particular Officer of the Court, called the Clark of the Iuries, and deliver the ſame to the Sheriff in due time, that ſo he may warne the Jury, and get the ſame returned before the Aſſiſes.

Note, that if a Cauſe be brought to triall, and a *Habeas corpora Juratorum* be delivered to the Sheriff who ſummons the Jurie, and if you for reaſons beſt knowne unto your ſelf, defer the triall untill ſome longer time, and afterwards you think fit to bring it again to triall, you need not be at charge of a ſecond *Venire facias*, but may take a Copy from the *cuſtos brevium* of your firſt Writ, if you keep it not in your

your hands, paying him for it 8 *d.* and for the ſearch of it 5 *d.*

Upon which Copie or old Writ, the Clark of the Juries will make you an *Alias habeas corpora*, or *Plures*, paying for it, in Debt or Treſpaſs, 10 *d.*

And in other actions 1 *s.* 6 *d.*

And for the continuance of it every Term, 4 *d.*

Then you muſt in ſuing forth your *Niſi prius*, ingroſſe your Record in Parchment, *verbatim*, according to the copie of the Iſſue made up, and the entry of it upon the Roll, in the Prothonotaries Office, and then examine the ſame with the Prothonotary, if it be upon an iſſue joyned the ſame Term, whoſe hand muſt be to it, and then carry the ſame to the clark of the Treaſury for the time being, giving him ſuch Fees for ſigning and making up the Record, as are hereafter ſpecified.

But if the iſſue were entred of a former Term, then muſt you deliver the paper-book of the iſſue to the clark of the Treaſury, who will examine the ſame by the Roll, and make up the Record thereupon; which done, and the ſame ſigned by him or his Deputy, you muſt ſeale the ſame with the Lord chief Juſtice of the Court, for the time being, who hath a Seale for that purpoſe, and then deliver the Record ſo ſealed, together with the *Habeas corpus Jur.* returned by the Sheriff to the clark of the Aſſiſe for the ſame county where the matter is to be tried.

The generall fees in an action of debt, trepaſs, *&c.* follow, as to making up the Record. *s.* *d.*

For the *Venire facias*, 2 *s.* 7 *d.*

For the return thereof, 2 *s.* 4 *d.*

For the *Poſt diem* thereof, 4 *d.*

For the *Habeas corpora Jurator.* and *Expedition*, 2 *s.*

For ſummoning the Jury, 12 *s.*

If

If in *London*, or a Corporation, but 4 *s.* 4 *d.*
For signing the Record with the Clark of the Treasury, if the same exceed not three sheets 2 *s.*
For every sheet exceeding 4 *d.*
For Examining the *Jurators.* 4 *d.*
For writing the Record, for every sheet 4 *d.*
For examining the same by the *Prothonotary* 1 *s.*
For the Seal 2 *s.* 2 *d.*

Having thus procured your Record of *Nisi prius*, you are to carry it at the time of the Assize and deliver it in to the Clark of the Assize, and there pay the Judges fee, having retained your councell, and your witnesse being in readinesse for the tryall of the Truth of your Cause, according to the Issue.

The Fees you are to pay at the Assizes are as follow,

For the Judges Fee in putting in the Record of *Nisi prius* 11 *s.* 8 *d.*
To each Counselour you retaine, at the least 10 *s.*
For reading the Record 10 *s.*
For the Marshalls Fees 2 *s.*
For the Jury, eight pence a piece 8 *s.*
To the Bailiff that keeps the Jury 2 *s.*
For the Crier 1 *s.*
For the Oath of every witness 4 *d.*
For a *Non-suit*
For a *Tales de Circumstantibus*
For a Privy Verdict
For a Warrant of Attorney if the Attorney be absent 4 *s.*

The Fees doe somewhat differ, by custome in severall Counties; But if the tryall be had before the Lord chief Justice of the common Bench in *London*,

those are common fees to be added unto the former.

For the Green cloath	1 s. 6 d.
To the Bar-Keeper and Hall-keeper	2 s.
To the Judges Groom or Foot-cloath man	1 s.
To procure the Record to be read	
For Lights, if the case be tryed by candle light	

The Assizes ended, your tryall being had, and Verdict passed for your Client, at the next Term following, you are to call for the return of the *Postea* from the Clark of the Assize, and thereupon bring the same to the Prothonotaries Office to get costs assessed, for which end (if your charges have been extraordinary) you must bring a Bill of disbursements under your hand, otherwise not, and thereupon cause Judgement to be entred: For the Entry whereof, the generall Fees are as follow,

For the returne of the *Postea*.	2
For signing the Costs.	1
For entring the Judgement, if the Jury did fully appeare.	2 s. 4 d.
If there were a *Tales*, then more.	1
For the Copy of the Judgement.	1 s. 4 d.

Having thus far proceeded, you may now procure Processe and VVrits of Execution, by *Capias ad Satisfaciendum*, *Fieri Facias*, *Elegit*, or otherwise, according to your desire, and as the nature of your Action brought, doth allow to require; wherein,

Note that the *Capias ad satisfaciendum*, is the taking of the Body only of the Party in Execution, till he satisfie for the Debt and Damages, the *Fieri facias* against the Goods onely, and the *Elegit* against the Moietie or any one half of his Lands and Tenements

and all his Goods, and Chattells (his Oxen and Plow-Cattel only excepted) to have and to hold the Goods as his owne Goods, and the ſaid Moietie of the Lands untill his Debt and coſts ſhall be fully ſatisfied and paid. But note this, that after an *Elegit* executed and filed you can never have any other Execution, it being your owne Election.

Note alſo, that if you firſt ſue forth a VVrit of *Fieri facias* againſt the Goods of the Defendant, and by vertue therof levy part of the Debt and not the whole then you may have afterwards a *Capias ad Satisfaciendum* againſt his Body, or an *Elegit* for the reſt, but if you firſt Impriſon his body by vertue of a *Capias ad Satisfaciend.* then you cannot have a *fieri facias* againſt the Goods, or an *Elegit*: if you have ſeverall judgements againſt ſeverall men for one and the ſame Debt, they being joyntly and ſeverally bound for the ſame; you may have two or three ſeverall Executions againſt them all, untill the Debt and Coſts be ſatisfied by one of them, but cannot have the whole of every of them; and if the Defendant be in another County, and not to be found in the ſame County where the Action was laid, then you muſt ſue forth a *Capias ad Satisfaciend.* into the ſame County where the Action was laid, and get the Sheriff to returne upon it (that he is not to be found) and then ſue forth a *Teſtatum* into the County where he is to be found: And thoſe Executions made immediately after Verdicts, &c, Judgments had upon them are made by the Clark of the Judgements in the reſpective Prothonotaries Office, who keep the Judgment papers where they are tranſcribed.

We have now ſhewed you the courſe how to proceed to tryall, after Outlawry reverſed or an appearance, in caſe the Defendant plead an iſſuable Plea, or indeed upon any other appearance made upon

mean Proceſſe: Onely take notice of this, that if the Plaintiffs Action be juſt, and right, and for good Debt or juſt cauſes of Action; the Attorney for the Defendant ſhall doe well to counſell his Client to yeeld to judgment, either by way of not being informed, Confeſſion, or otherwiſe, ſo that he procure ſtay of Execution againſt his Client for ſuch time as ſhall be agreed on by both Attorneys, which muſt be carefully looked unto by the Attorney of the Defendant in time, before the rule be on and they take judgement by default: And this he ſhall do by putting his hand to the Plaintiffs Attorneys Docquet-Book, in this manner.

I am not informed, ſo that Execution be ſtaid till the Morrow after the holy Trinity.

Hereford. ß. Bridges for *Lacie* *Dowdeſwell.*
Dowdeſwell for *Hunt. Rot.*

After which you draw up the judgment ſhort in paper and carry it to the *Prothonotary*, who is to tax Coſts and for that you pay him 3 *s.* 4 *d.* if in debt upon one ſingle contract, and then you are to take it out (the Plaintifs name, and the Defendants and the Attorney for the Plaintiff, in the Judgment Book) after which you enter it upon ſome Roll of the Court in the *Prothonotaries* Office, and keep the number-Roll by you to your Docquet Book, that ſo upon all occaſions you may have ready recourſe to it; and the Plaintifs Attorney muſt be carefull of keeping together the Copies of all his judgments, that ſo when he hath occaſion to renew them by *Scire facias*, he need not be driven to take out new Copies, which are chargeable out of the Treaſury.

And note, that in caſe the judgment have continued above a year and a day, and no Execution taken out, he muſt be put to renew it by *Scire facias*

ſo muſt he likewiſe doe, in caſe the Plaintiff or Defendant die.

And in caſe of any Judgment had in Debt againſt an Executor or Adminiſtrator, you can have but a *Fieri facias* of the Goods of the party deceaſed, in the hands of the Executor or Adminiſtrator, but if the Sheriff return upon your *ſcire facias* a *devaſtavit*, then ſhall you have a *Fieri facias* of the proper Goods of the Executor, or Adminiſtrator; and if the Sheriff return that he hath no Goods, you ſhall have a *Capias* againſt his Body and after an Exigent, and ſo to the Outlawry after Judgment, if you pleaſe, in caſe you find him not eaſily to be arreſted.

The courſe whereof is thus.

FIrſt then he muſt have a *Capias ad ſatisfaciendum* to be made for the Debt and Coſts, if it be in Debt or after a judgement had for Treſpaſſe for the Damages and coſts, as in the Judgment with which muſt be made into the ſame County where the Action was laid, and get the ſame returned by the Sheriff, with (*that he is not found, &c.*) Then he muſt carry the ſame to the *Exigenter* of the ſame County, who will make an Exigent thereupon which muſt be delivered unto the Under Sheriff to be executed and returned accordingly, as other *Exigents*.

NOte that in this caſe there ſhall need no Declaration at all againſt the Defendant, to give him notice thereof.

The Exigent being returned, you may ſue forth the Proceſſe of Outlawry from the Clark of the Outlawries, either generall or ſpeciall, as in other Actions afore ſpecified, whereupon the Defendant, if he

be arreſted, cannot be diſcharged without ſatisfaction to the Plaintiffe, and reverſing, or pardon of the Outlawry; this is the utmoſt and laſt proceeding the Common Law doth or can afford in any Caſe whatſoever.

The Fees to the Outlawry after Judgement are as follow;

	s. d.
FOR the *Capias ad Satisfaciendum*	1-1
For the return thereof	0-4
For the Poſt-*diem*	0-4
For the *Exigent*	1-7
For the returne thereof	0-4
For the generall *Capias Utlegatum*	0 11
For the ſpeciall *Capias utlegatum*	2-1

Note that in this Caſe you may have either generall or ſpeciall *Capias utlegat.* into as many ſeverall Counties as you will, either in *England* or *Wales*; but obſerve further, that no Proceſſe whatſoever iſſuing or to be made in or out of the Common-Pleas, can be directed or executed to or by any Under-Seriff in *Wales*, but onely *Elegits*, *Extents*, Proclamations upon the meane Proceſſe, as before: *Capias Utlegatum*, generall or ſpeciall, or upon Outlawries after Judgement. If the Defendant be Outlawed after Judgement, if he cannot be arreſted within a year and day, yet the Plaintiff ſhall not need to renue judgement by way of *Scire facias*, but otherwiſe in caſe he be not Outlawed, he muſt, as I before recited.

The manner of renewing the Judgement by Scire Facias.

FIRST, the Plaintiff muſt ſue forth a *Scire Facias* againſt the Defendant in the County where the Action was laid, directed to the Sheriff to give notice to the Defendant to appear and ſhew cauſe why the Plaintiff ſhould not have Execution againſt him, for the Debt and coſts formerly recovered: To which Writ if the Defendant can ſhew any good cauſe as a Releaſe, ſatisfaction, or any other juſt cauſe or ſufficient diſcharge, then he may appeare and plead in Bar his diſcharge.

If the Defendant upon returne of the ſame *Scire facias*, do not forthwith appear and plead, the Plaintiff ſhall have preſent Execution againſt him.

But if the Defendant, after the ſaid Judgement obtained, and before ſatisfaction of the ſaid Debt had, unleſſe the Plaintiff procure a *Scire facias, &c.* to be returned upon the firſt *ſcire facias* againſt the Executor or Adminiſtrator, then the Plaintiff muſt ſue forth a ſecond *ſcire facias* againſt the Executor or Adminiſtrator of the Defendant, and upon their ſecond default, the Plaintiff ſhall have preſent Execution againſt them, having after the return of the ſaid *ſcire facias*, taken it out, and given a Rule in the Remembrance in the Prothonotaris Office to this purpoſe, that unleſſe the Defendant plead ſomething to this Writ (by ſuch a day) Execution is to be made by default.

NOte that theſe ſeverall Writs are to be made and ſued forth together with the Execution, in and out of the ſame *Prothonotaries* Office, and where

the first Judgment was entered: And the said Writs of *Scire facias*, together with the new Judgment had thereupon, to be entered upon Record, in the same Office, and the Writs carefully filed with the *Custos brevium*.

The severall Fees are these.

FOr search in the Docquet for the Number-Roll,	4 d.
For searching in the Treasury	4 d.
For the Copy of the Judgment usually	2 s.
For the Clark for making the Writ	8 d.
To the Prothonotary for signing of it	1 s. 4 d.
For the Seale of it,	7 d.
For the Return with a *Nihil*	1 s.
For the Return with a *Scire feci*	2 s.
For entring the Judgment upon default, upon one *Scire facias*,	2 s.
If upon two *Scire facias's*	4 s.
For the Copy	2 s.
For taking the Writs into a Remembrance	1 s.
For the Rule	4 d.
For a Warrant of Attorney	8 d.

Upon these proceedings duely and truely performed the Plaintiff may have Execution against the Defendant, by *Capias ad satisfaciendum*, by *Elegit*, or otherwise at his pleasure (as is before told you in Writs of Execution:) And if the Defendant be dead, then there shall issue against the Executor, a *scire facias de bonis testatoris*.

Thus

THus far having proceeded in debt againſt the Defendant himſelfe, his Executor, or Adminiſtrator either by way of *ſcire facias*, or otherwiſe, we now proceed to proſecution to Judgement and Execution upon ſpeciall Baile; wherein obſerve theſe Rules following.

IF the Defendant be arreſted by meane Proceſſe, as *Capias*, *Alias*, or *Plures*, and the Plaintiff holdeth him not ſufficient to anſwer the debt or damages contained in the Writ, the ſame amounting to 20 *l.* or upwards; In this Caſe the Plaintiff upon the return of the Writ, may crave ſpeciall Baile to be put in to his Action, which the Defendant muſt put in before ſome Judge of the Court where the Cauſe depends, who will accept of ſuch Baile as the validity or weight of the Cauſe doth require, or in his diſcretion ſhall be thought fit.

If the appearance be upon arreſt, by the *Capias*, *Alias*, or *Plures*, then the Bail muſt be taken, and entred by the Philizer of the ſame County where the Action was laid, and who made the ſaid Proceſſe.

BUt if the Defendant be arreſted in the Mayor, Bayliffs, or Sheriffs Court, of any City or Corporation, and the Defendant by any Writ of priviledge, or *Habeas Corpus*, doe remove the ſame out of the ſame Corporation to be tried at Common Law above;

Then the Baile being taken by any Judge of the ſame Court, muſt be entred in the ſame *Prothonotaries* Office, where the ſaid Writ of priviledge or *Habeas Corpus* iſſued and was ſued out.

THe Defendant being as aforeſaid bayled, the Plaintiff may proceed and declare againſt him

as

as the nature of his Cause or Action shall require, observing the same form and manner in every respect or point to procure Judgement and Execution by way of *Nihil dicit*, *non sum informatus*, Confession of the Action, tryall by *Nisi prius*, or otherwise, as is formerly set down and expressed by Supersedeas.

And the Plaintiff having obtained judgment against the Defendant, and perceiving that he is not easily to be arrested and taken in Execution, or not sufficient to satisfie the same, but knoweth the Bail to be better able, then the Plaintiff may at his choice leave the Defendant, and prosecute the Baile in this manner following.

FIrst, the Judgement being entred, he must sue forth an Execution by *Capias ad satisfaciendum* against the Defendant, directed to the Sheriff of the same Countie where the Action was first laid, and upon the return thereof, get the same returned by *Non est inventus*, that is, (he is not to be found) then he must procure a Writ of *scire facias* against the Baile, to shew cause how the Plaintiff should not have Execution against them according to the Recovery or Judgement so had against the Defendant, upon which Writ if the Sheriff doth returne a *scire feci*, then there needs no second Writ to be made, but if he return a *Nihil* then there must be a second Writ of *scire facias*, which being returned likewise with a *Nihil* then the two Writs of *scire facias* must be taken out upon Remembrance in the *Prothonotaries* Office with the returnes of them, and Rules thereupon given, and filed accordingly with the *Custos Brevium*, and thereupon if the Baile shew not cause to the contrary, Judgment by default shall be entred against them in the said *Prothonotaries* Office, for the sum in which they became Baile as aforesaid, whereupon the Plaintiff

tiff may take Execution out against them, either by *Fieri Facias*, or *Elegit*, but not by *Capias ad satisfaciendum*.

And in this case observe, that the Plaintiff may likewise sue and arrest the Baile going by way of Originall at the common Law, for the sum for which they became bail, and arrest their bodies, either upon the *Capias alias*, or *Plures*, or sue them to the Exigent thereupon, and declare upon the said Recognizance, using all prooeedings therein as in an Action of Debt, but in this the Action must be laid in the County of *Middlesex* onely, where the Records do lie, and whence the *Venue* out of that respect must rise.

And if the bail cannot be arrested in the County of *Middlesex* upon a *Capias*, &c. you may return (he can not be found, &c.) and sue forth thereupon a Writ of *Testatum*, and by that means arrest them in any other County where they may be found, observing all the Proceedings, as in an Action of Debt.

WEe have now shewed you how to proceed against the Bail, as well as against the Defendant himself, we come next to shew you how to prosecute a Writ of Errour and reverse Judgement thereupon (which is not so absolutely taken away as most men conceive by the late statute) but that still if there be substantiall matter of Error to be allowed of the Court, it holds good after Verdict, and is not at all taken away in Judgement upon *Nihil dicit &c.*

And there are various causes of reversing an Outlawry, as we formerly shewed, so some of them may serve to reverse a Judgement, which I shall here particularly relate.

After

After a Judgment had and recovered by (*Non ſum informatus*,) Confeſſion or otherwiſe (if it be not by triall of *Niſi prius*) theſe cauſes of Errour or any of them being duely found, may ſerve to reverſe and make void the ſame.

Firſt if there be any materiall difference or variance between the additions in the Originall, or the Proceſs of *Capias*, *Alias*, *Plures*, and Exigent, and the Judgment which is warranted by them; this is good cauſe of Errour.

Secondly, if the Debt demanded in the Proceſſe or either of them, and the debt in the judgment recovered doe not agree, but are different, this is good cauſe of Errour.

Thirdly, if the Writ be not ordinarily and duely returned and filed with the *Cuſtos brevium*, there is a juſt cauſe of Errour.

Fourthly, if there be not warrants of Attorney duly filed, and put in the Office accordingly, as the cauſe requireth, as one for the Plaintiff upon ſuing forth of the Exigent, or upon the entry of the Judgment, there is good cauſe of Errour, for which you are to make ſearch with the Clark of the warrants for the time being.

And for theſe and all other Errors, you are to ſearch and get Copies of the Writs from the *Cuſtos Brevium*, and obſerve diligently both them and their returnes and confer them with the Judgement as it is entred upon Record in the Prothonotaries Office, where you are to take your Number-Roll out of the Docquets to that purpoſe, that ſo you may goe readily to it in the Treaſury.

Fifthly, if the Defendant be arreſted by a Writ of *Teſtatum* in a forraine County, and no Writ of *Capias ad ſatisfaciendum* returned againſt the Defendant with a *Non eſt inventus*, in the ſame Countie, where

the

the Action was laid and filed with the *Custos Brevium* that is good cauſe of Errour in the Execution, but not in the Judgment.

NOw being informed of the cauſes of Errour, and that the Defendant be not arreſted and taken in Execution, but would avoid the ſame, then muſt he proceed as follows.

IN the firſt place, having the Number-roll, he ſhall do well to get a copie of the judgement, with the Additions of the party Defendant, and of the Debt and Coſts of Suit literally as it is entered upon the Record.

The Prothonotaries Office as I formerly told you, is the place where you are firſt to reſort, and there to the Docquet-Houſe to find out your Number-Roll in the Docquets of that Terme, when the judgment was entred; and having found the Cauſe, take the number-Roll, and then repair to the Records in the Treaſury at *Weſtminſter*, and ſo the Roll, and take a true Copie of the Judgement in all things, as above.

Then carry the ſame or a copie of the Præcipe, debt and Coſts, to the Curſitor of the ſame Countie where the Action is laid, who thereupon will make you a Writ of Errour.

THen you muſt goe with the Writ of Errour to the Clark of the Errours, for the time being, who will take out the Judgment with the Debt and Coſts of Suit, in his Book of Remembrance for Baile, and be ſure you carry with you good Sureties, ſuch as the Validity of the cauſe doth require.

Thereupon your Sureties, together with the Writ, muſt be brought to the Lord Chiefe Juſtice of the common

common Bench for the time being, and there enter Bail in a Recognizance, together with the Defend in double of the Debt, that the Defendant hath good cause of Error, and shall follow the same Writ with effect: And if the Defendant shall happen to be condemned therein, and not able to prove a sufficient Error therein, then that Defendant shall pay the condemnation therein with further costs of Suite, such as shall be allowed, or they the Sureties for to doe the same; To this the Judge subscribeth his hand and thereupon giveth Warrant to the said Clark of the Errors to make *Supersedeas*, 1. 2. or more as the Defendant for his Indempnity, or safegard from Arrest shall require; which Writ or writs the Defendant is to allow with the Sheriff of the same County or Counties where he standeth in danger or fear of Execution before he be Arrested, or the said Execution Executed, either upon Body or Goods, or else the said *supersedeas* is of no force, nor can be allowed, whereof the Defendant is to have speciall care, that he have it in an early manner.

And this may be done as well in the Vacation, as in Term time, if the Defendant be not arrested, or have his Goods taken in Execution, by vertue of the said judgement.

But if the Defendant be taken in Execution before the *Supersedeas* be procured, then the Supersedeas comes too late, for the Defendant shall not thereupon be released, but must continue in durance, untill such time as the judgement shall be reversed by the said writ of Errour, in the Upper Bench.

FOR Reversall whereof he must not onely sue forth his writ of Errour, as above, but also cause the whole Record of all the Proceedings, from the Originall and the beginning of the same cause (if Er-

rour

rour be not found in entry of the Judgement it ſelfe) to be certified by the ſaid Clark of the Errours, out of the Common Pleas into the Upper-Bench, and Aſſign cauſe of Errour there.

The Record being thus certified, and Errour aſſigned upon the return of the ſaid Writ of Error, he is to take Copies thereof, and thereupon ſue forth a VVrit of *ſcire facias* to the Plaintiff, in the Action to heare Errors.

To this the Plaintiff if he ſee cauſe may appear and plead, and the moſt uſuall and common Plea there, is, that the Record is in nothing Erroneous.

The Plaintiff having ſo pleaded, and willing to have the ſaid Errour argued, and the Judgement confirmed as cauſe ſhall require;

The Defendant according to his Recognizance; muſt ſo follow the ſame with effect, or elſe he will be condemned therein.

The Defendant, is then to labour for a day given, for the arguing or the ſame Errour, if the Cauſe ſhall ſo require.

But if the Defendant doe delay the Plaintiff, the Plaintiff is to ſue forth two *ſcire facias's* againſt the Defendant, to ſhew cauſe why he ſhould not have execution: And if at return of the ſecond *ſcire facias*, Errors be not aſſigned, Judgement is confirmed for the Plaintiff.

NOte that in this caſe upon a Writ of Error brought upon a Judgement had in the Court of Common Bench, and returned into the Upper Bench, the proceeding thereupon muſt be only in the Upper Bench, to which Court and no other it doth properly belong after tis thither returned.

But a Writ of Errour upon a Judgment had in the Upper Bench must be returnable in the Exchequer Chamber; and the cause of Error is onely heard and determined before the Lord chiefe Iustice of the Common Bench, the Lord chief Baron of the publique Exchequer, and the rest of the Iudges and Barons who are of the Coife of those two Courts, and not before the Iustices of the Court of Upper Bench, where the Cause formerly depended; and received its Iudgement.

If the Errour be found and allowed by them, to be sufficient and good, then the said Iudgment is by their full consent and Iudgment to be reversed and made void.

But take notice, that notwithstanding the reversall thereof, it takes not away the Plaintiffs cause of Action, for the Plaintiff may commence a new Action against the Defendant for the same Cause, if he so think fit.

If the Errour be not found good and allowed, then is the former Iudgment affirmed, and further Costs for delay of Execution allowed to the Plaintiff, who may presently sue forth Execution out of the Court of Upper Bench, either against the Defendant or his Sureties as he thinks best, and prosecute against them either by *scire facias*, &c, as in the case of speciall baile, as above, or by an action of Debt: But if any writ of Errour be sued in any other Action then an Action of Debt, no Baile is required.

The Fees in this case are very uncertain, and cannot be expressly set down, but the Heads of them, according to their proceedings, are as follow.

For search of the Record to find the Errour.

For

For the Copies of the Record.
For the Writ of Errour.
For the Lord chief Iuſtices Fee.
For putting in Baile.
For certifying the Record.
For aſſigning cauſes for Errour.
For an *Habeas Corpus.*
For the allowing.
For the return.
For the *Superſedeas,*
For the Copy of the Writ of Errour.
For drawing *Diminution,* if need require.
For the Copy thereof.
For entring the Errours and Plea.
For a *Certiorari,* if need require.
For a Certificate from the *Cuſtos brevium.*
For entring the ſame, and *Diminution.*
For the warrant of Attorney,
For the Copies of the Books for the Iudges.
For Counſellours Fees.
For affirming the Iudgment.
For the Copy thereof
For the *Scire facias* and entring.
For filing and returning.
For Attornyes Fees.

Cum multis aliis quæ nunc, &c.

NOte that if upon any Iudgment recovered and had againſt the Defendant, he be taken in Execution, or have his Goods taken, or his Land extended for the ſame, and upon full payment or ſatisfaction of the Debt and coſts, the Plaintiff, ether in perſon, or by his Attorney, doe acknowledge ſatisfaction upon Record, in the ſaid Court wherein the Iudgment was entred; and if the Defendant at no time, from thenceforth or after, made a Releaſe of Er-

rours to the Plaintif, and that there be good cauſe of errour found in the ſaid judgment, the Defendant may bring a Writ of Errour upon the ſaid judgment, and upon arguing thereof, (as before, the Errours being allowed by the Judges, and the Judgment thereupon reverſed) the Defendant may ſue forth a Writ of Reſtitution againſt the Plaintiffe, and recover back again the full Debt and coſts of Suit ſpecified in the ſaid Judgment; but if he have made a releaſe, he is void of remedy.

And take notice further, that if there be a judgement had and recovered againſt the Defendant by way of *niſi prius*, and Verdict of twelve men, Then unleſſe he can find ſome cauſe in the Originall or the entring or giving of the ſaid Judgment after the Verdict ſo given and had, he cannot be admitted to ſue forth a Writ of Error, for by many Statutes, and particularly the Statute of *Jeofailes*, many great faults, miſpriſions, or cauſes of Errour had or committed in proſecution of the ſaid Cauſe before the ſaid Verdict, are taken away.

Obſerve further, that if the Defendant be outlawed after judgment, and there be good cauſe of Errour to be found, as well for or in the ſaid judgement as Outlawry, the Defendant may bring a Writ of Errour, and be bayled for both, and have a *Superſedeas*, as well for the ſafeguard of his bodie as goods before they be arreſted or taken upon the ſame.

NOw becauſe we have omitted to ſpeake of acknowledging of ſatisfaction where the debt is ſatisfied and judgement had, whereby the Defendant in Caſe the ſatisfaction be not acknowledged may be in danger in paying twice one and the ſame debt, therefore obſerve the enſuing rules.

When you are to acknowledge ſatisfaction, be ſure

to have a ſufficient warrant for it from your Client, and likewiſe let the Defendant ſeal a releaſe of Errours for the reaſon before alledged.

If it be in Terme time, get the Cryer to bring the Roll into Court, and lay it before the Secondary, with the cauſe ready before him, and pray him to enter ſatisfaction, which the Secondary of that *Prothonotary* in whoſe Office the cauſe was entred, will do you, paying the Fees as follow.

To the cryer for bringing in the Roll	6 d
To the box, if the debt be not above forty pound	6 d
If above forty pounds, for every hundred pounds	1 s
To the Prothonary	2 s. 4d
To the Secondary	4 d.
For the Attorneys fee	3 s. 4d

HAving gone thus far in actions of Debt it reſts now wee ſhould ſpeak ſomething of a wager at Law, which is a plea uſuall by the Defendant where an action of Debt is brought againſt him, either for money lent, or upon a Book-debt, or upon detinue, or any other action of Debt which is not grounded upon ſpecialty (unleſſe it be where an account hath formerly been before Auditors) in all which caſes the Defendant may wage his law, and there are two wayes of waging Law.

The firſt is called *Lex juſtanetr*, which is when your client will preſently upon pleading come into court & ſwear that he oweth or detaineth nothing, in which caſe it behoves you to have your client ready, at the time when you plead, and the next day, or ſecond bring him into court, and let him do his law, in which caſe the Plaintiffe cannot become

non-ſuit; but upon a wager at Law at a day aſſigned he may be non-ſuited.

Note *Lex inſtanter*, cannot be after a generall imparlance, nor doth an Eſſoyn lie in that caſe.

FOr the other kind of wager of Law, which is *Lex ad diem*, where a day is aſſigned, there is to be given fifteen dayes at the leaſt, after the Law pleaded for doing thereof, that is, fifteen dayes after the comming in of your Imparlance, at which time, if your Client be not ready to do his Law, he may be Eſſoyned (that is to be excuſed for that time) and have a longer day to do it, which you muſt doe upon the Eſſoyn day of that returne, wherein your Law ſhould have been done in Court.

Note that the Plaintiffs Attorney muſt ever look on the dayes of Exceptions, in caſe there be no Eſſoyne caſt, to enter a *Ne recipiatur*, but if there be an Eſſoyn caſt, then to adjourn it; and to look to the continuances, as this, and the nature of the Actions, the Eſſoyns are caſt in, require.

Note further, that upon an Eſſoyn caſt, if it be not adjourned by the Plaintif, he may be non-ſuited, as is before ſhewed.

If an Eſſoyn be caſt where it will not properly lie, you may have it diſſolved, which is called quaſhing, which ſhall return the Defendant or Tenant default.

NOte, the Tenant or Defendant may (for the moſt part,) be Eſſoyned upon every Original writ before appearance, with cauſe or without cauſe, whereby doth enſue great delay to the Plaintiff, and ſometime the Defendant may be Eſſoyned after an Eſſoyn in Action reall (of which we ſhall hereafter treat more at large by it ſelfe.) The Tenant for life at the returne

returne of the originall Writ may be Eſſoined, and then the Defendant muſt adjourne the ſame, wherein muſt be given common daies of returne, and at the day given by the Eſſoyn, the tenant may demand the view, wherin muſt be given other daies of returne and at the day of view, the Tenant may be Eſſoyned again, and then he may pray in aid of him in the Reverſion, and at the returne of the ſummons *Ad Auxiliand*: he that is prayed in aid, may alſo be Eſſoyned for nine returnes, at which time the firſt Tenant may be Eſſoyned again: And all theſe delayes the Tenant may inforce the Demandant to ſuffer.

Note that in all reall Actions upon the Summons, the Tenant may be adjourned by the Demandant unto the ninth returne following, Incluſive, but of this more in its proper place.

The Fees incident to the wager of Law and Eſſoyns, Exceptions and Adjournments follow in a Table amongſt other Fees.

NOte, that many of theſe Actions of Debt are brought in inferiour Courts, as in in the Sheriffs or Majors Court in *London*, and in other corporations, where they hold plea by their Charters for very great ſums, where the Defendant for delay or otherwiſe doth uſually bring a *Habeas Corpus* or Writ of priviledge, which doth remove both the body (if in Priſon) together with the cauſe.

This *Habeas Corpus* or Writ of Priveldge, muſt be made by one of the *Prothonotaries* Clarks, and muſt be ſigned by one of the Judges of the court, and after by the *Prothonotary*, and after ſealed and carried under ſeale, and delivered to the Judge or Steward, or other Officer in chiefe, of ſuch inferiour court where the cauſe is depending, where upon alowance of it, they returne it, and certifie the cauſes

which done, he that brings the *Habeas Corpus*, muſt put in baile above, before the Judge, moſt uſually that ſignes the Writ, ſuch as the Judge ſhall approve of, when he ſees what the cauſes are.

BUT if the party do not appear at the return of the ſaid Writ, and put in good baile, in ſome ſhort time (for they cannot put in common baile, though the Action be never ſo ſmall) you may have a *Procedend*, to carry back the Cauſe or Cauſes to the Court below, from whence they were removed, there to be proceeded into Judgment.

The Fees of a *Habeas Corpus* are as follow.

	l.	s.	d.
To the Clark for the Writ	0	8.	
To the Prothonotarie for ſigning it	1	4.	
For the Seale	0	7.	
To the Iudge for his hand thereunto	4	0.	
For the Attorneys Fee	3	4.	
For allowing the Writ	2	8.	
For the returne of the firſt Cauſe	2	8.	
For every other cauſe	1	0.	
For a bill of *Multas cauſas*, if in *London* for ſearch	0	4.	
To the Serjeant, if in *London*, for his Fee at leaſt	10	0.	
For putting in baile before the Iudge for the firſt Cauſe	10	8.	
For every other Cauſe	3	0.	
To the Prothonotary for filing the baile, for the firſt Cauſe	6	4.	
For every other cauſe	2	0.	
For the Attorneys Fee	3	4.	

Now becauſe there are many miſcariages in theſe *Habeas Corpus*, whereby the Writs themſelves become unuſefull, in being not allowed, all which proceeds moſt uſually from the miſtake of title of the Corporation or Court to which it is directed, I have thought fit to inſert the titles of the moſt corporations througout *England*, as follows Alphabetically.

A

St. Albons.

TO the Major, principall Burgeſſes and Recorder of our Burrough of Saint *Albons* in the County of *Hertf.* greeting.

Abenden.

To the Major and Bayliffs of our Burrough of *Abenden* in the County of *Hertford*, greeting.

B.

Briſtoll.

TO the Major, Aldermen, and Sheriffs of the city or Town of *Briſtoll*, and to the Major and conſtables of the ſame City or Towne, and alſo to the Bailifs and commonalty of the ſame City or Towne of *Briſtoll*, and to the Bayliffs of the ſaid Major and commonalty of the ſame City or Towne in Court, and to either of them, greeting: (Note this City hath divers Courts within it, which cauſes the divers appellations.)

Burgavenie.

To the Steward and Bayliffs of *L. Nevill*, Lord *Abergavenie* of his Town of *Burgavenie*, greeting.

Bridgewater.

To the Major and Bailiffs of the Town of *Bridgewater*, greeting.

Bedford.

To the Major and Bailiffs of the Towne of *Bedford* greeting.

Bridgenorth.

To the Bayliffs & Burgeſſes of our Town of *Bridgenorth*, greeting.

Boſton

To the Major & Burgeſſes of our Burrough of *Boſton* in the county of *Lincoln*, greeting.

Barnſtable.

To the Major, Aldermen, and Burgeſſes of our Burrough and town of *Barnſtable*, greeting.

Banbury.

To the Bayliffs of our court of *Banbury*, greeting.

Barwick.

To the Major of the town of *Barwick* upon *Tweed*, greeting.

Battell.

To the Steward and Bayliffs of *A. Brown* Knight Lord *Mountague*, of his Liberty of *Battel* in the county of *Suſſex*, greeting.

Bath.

To Major, Recorder, Aldermen, and Juſtices of the city of *Bath*, greeting.

Bodmyn.

To the Major commonalty, and Clarks, of our Burrough of *Bodmyn* in the county of *Cornwall*, greeting.

Buckingham.

To the Major, Burgeſſes, and Steward of the Burrough and Pariſh of *Buckingham*, greeting.

St. Edmonds Bury.

To our head-Bayliff of our town of *Bury, St. Edmonds* and

and to our head-Steward of our Liberty of the Burrough of S. *Edmonds*, & to every one of them, greting.

Bewdley.

To the Bayliff, Recorder, and Burgeſſes of the Burrough of *Bewdley*.

Bridewell.

To the Major, commonalty, and Citizens of the city of *London*, and to the Governours of the Hoſpitall of *Edward* the ſixth, late King of *England*, to wit, Chriſts *Bridewell* St. *Thomas* the Apoſtle, greeting.

Beverley.

To the Major, and Governors of the Town of *Beverley*, greeting.

Biddiford.

To the Major, Aldermen, head Burgeſſes, and to the Recorder, or his ſufficient Deputy of the Town of the Burrough of *Biddiford*, and to either of them, greeting.

Newcaſtle upon Tyne.

To the Major, Aldermen, and Sheriff of the Town of *Newcaſtle upon Tyne*, greeting,

C.

Cirenceſter.

TO the Maior, Aldermen, and Citizens of the city of *Ciceſter* greeting.

Colcheſter.

To the Bayliffs of the Town of *Colcheſter*, greeting.

Canterbury.

To the Major and Bailiffs of the towne of *Canter-*

Bury

bury, and to either of them, greeting.

Coventry.

To the Major and Baylifs of the city of *Coventry*, greeting.

Chipping-Wiccomb.

To the Major, Steward and Bayliffs of the Burrough of *Chipping-Wiccomb*, greeting.

Carliſle.

To the Major and Bayliffs of the City of *Carliſle*, greeting.

Cheſtenham.

To the head Steward, Bayliff of the Mannor of the Borrough or Town of *Cheſtenham*, and to either of them greeting.

Chepſtow.

To the Steward and Bailiffs of the town of *Chepſtow* in the county of *Monmouth*, greeting.

Caſtle-riſing.

To the Major and Burgeſſes of the town of *Caſtle-riſing*, greeting.

Chipping-Norton.

To the Baylifs of the Burrough of *Chipping-Norton*, or otherwiſe, to the common Clark, or Deputy there, greeting.

D.

Downehewot.

TO the Major, Aldermen, and Recorder of the Burrough of *Downehewot*, otherwiſe called *Launceſton* in the county of *Cornwall*, greeting.

Doncaſter.

To the Major and Recorder of the Town of *Doncaſter*

caſter, and to both of them, greeting.

Derby.

To the Major, Recorder, and Burgeſſes of the town or Borrough of *Derby*, or to either of them.

Downwick.

To the Baliffs of the Burrough or Town of *Downwick* in the County of *Suffolk*, greeting.

Clifton, Dartmouth-hardneſs.

To the Major, Bayliffs, and Burgeſſes of the Burrough of *Cliſton*, *Dartmouth hardneſſe*, greeting.

Dover.

To our Conſtable of the Caſtle of *Dover*, and one of the Keepers of our five Ports, or to him that holds the place there.

E.

Ely.

TO the Juſtice of Pleas within our Iſle of *Ely*, held and aſſigned, greeting.

Exeter.

To the Major and Bailiffs of our City of *Exeter*, and to the Bayliff in Court of the ſaid City, and to either of them.

F.

Ferriet neere Shrewsbury,

TO the Steward and Bailiffs of the Liberty of *Ferriet* behind the Town of *Shrewsbury*, greeting.

Fleet.

To the Warden of the Priſon of the *Fleet*, or to him holding

holding the place, heret.

G.

Gilford.

TO the Major of our Town of *Gilford*, greeting.

City of Glocester.

To the Major, and Sheriffs of our City of *Glocester*, greeting.

Gravesend and Milton.

To the Major, Jurors, and Inhabitants of the town and Parish of *Gravesend* and *Milton* in the county of *Kent*, greeting.

H.

City of Hereford.

TO the Major of our City of *Hereford*, greeting.

Hebson.

To the Major and Burgesses of our borrough of *Hebson* in the county of *Cornwall*, greeting.

Haveringe.

To the Steward of our Mannor of *Haveringe Atbowry*, greeting.

Higham-Ferries.

To the Major and Aldermen of our Town of *Higham-Ferries*, and to either of them, greeting.

Hertford.

To the Major and head Burgesses of our Burrough of *Hertford*, and also to the Steward in Court of Record there, greeting.

Huntingdon.

Huntingdon.

To the Major and Bailifs of the Towne of *Huntingdon.*

I.

Ipſwich.

TO the Bayliff of our Town of *Ipſwich* in the County of *Suffolk*, greeting.

Great Irnemouth.

To the Bailifs of the Town of Burrough, and Liberty of great *Irnemouth*, greeting.

K.

Kingſton upon Hull.

TO the Major and Sheriff of our Town of *Kingſton upon Hull*, greeting.

Kingſton upon Thames.

To the Bayliffs of our own Town of *Kingſton upon Thames*, and Steward of the Town-Court there, and in the abſence of the ſaid Steward, to the Bayliffs and Recorder of the ſaid Town, or to two of them, greeting.

St. *Katharines next the Tower.*

To the Steward of the Maſters, Brethren, and Siſters of St. *Katharines* behind our Tower of *London*, in Court there, greeting.

L.

Lincoln.

TO the Major and Sheriffs of the City of *Lincoln*, and to either of them, greeting.

Ludlow.

To the Bayliffs of the Town of *Ludlow*, greeting.

Lichfield

Litchefild.

To the Bayliffs, Burgeſſes, and citizens of the city of *Litchfield*.

Kings Lenne.

To the Major and Recorder of the Town or Burrough of *Kings Lenne* in the county of *Norfolk*, and to either of them.

Kings Lyn.

To the Major of our Town of *Kings Lyn*, in the county of *Dorſet*.

Leiceſter.

To the Major, Bayliffs, and Burgeſſes of the Town of *Leiceſter*, greeting.

Lidford,

To the Major and Burgeſſes of the Burrough of *Lidford*

M.

Maidſtone.

TO the Major of the Kings Town and Pariſh of *Maidſtone.*

Monmouth.

To the Major and Bayliffs of the towne of *Monmouth.*

Kings Milcomb.

To the Major and Bayliffs of the Town or Burrough of *Kings Milcomb.*

Mincholts.

To the Burgeſſes of the Burrough of *Minchilots*, in the county of *Somerſet*, greeting.

Marleborough.

To the Major and head-Burgeſſes of the Burrough

rough of *Marleborough*, greeting

Middleton.

To the Steward of our court of *Middleton* behind *Sittingborne.*

N.

Norwick.

TO the Major and Sheriffs of the city of *Norwick*, and to either of them, greeting.

Newport.

To the Major, and Baylifs of the Burrough or town of *Newport.*

Northampton.

To the Major and Bayliffs of the town of *Northampton*, greeting.

Nottingham.

To the Major and Sheriffs of the town of *Nottingham*, greeting.

Newark.

To the Major and Aldermen of the town of *Newark* upon *Trent*, in the county of *Nottingham.*

O

Oxford.

TO the Major and Bailiffs of the city of *Oxford*, greeting.

P.

Plymmouth.

TO the Major of the Burrough of *Plymmouth*, greeting.

Plymton.

To the Major, Bailiffs and Burgeſſes of the Burrough of *Plymton.*

R.

Reading.

TO the Major and Burgeſſes of our Burrough of *Reading*, greeting.

Rocheſter.

To the Major, Aldermen, and citizens of our City of *Roffen*, and to either of them, greeting.

S.

Sudbury.

TO the Major, Aldermen, Burgeſſes, and Steward, of our town of *Sudbury*, greeting.

Stafford.

To the Major and Burgeſſes of our town of *Stafford*, greeting.

Southhampton.

To the Major and Bailiffs of our towne of *Southhampton* in Court there, and alſo the Keeper of our Goale within the ſame towne, or to his Deputy, or to either of them, greeting.

Saltaſh.

To the Maior, Aldermen, and burgeſſes, of the borrough of *Saltaſh*, greeting.

Southwark.

To the Steward in Court and Maior of the comminalty, and Citizens of the city of *London*, and burrough of *Southwarke* in the county of *Surrey*, or to his Deputy, greeting.

Shrewſbury

Shrewsbury

To the Baylifs of our Town of *Shrewsbury*,

Startford upon Avon.

To the Baylife of our Burrough or Town of *Stratford* upon *Avon*, and alſo to the head Alderman of the ſame Burrough, or Town, and Common Clark there.

Southmolton.

To the Major and head Burgeſſes of the Burrough of *Southmolton*, greeting.

T.

Talboth.

TO the Baylifs in Court of *Talboth* or Town of *Biſhops Lenne*, greeting.

Taveſtock.

To the Steward or baylifs in Court of the Earle of *Bedford*, his liberty of *Taveſtoke*, greeting.

Totnes.

To the Major of the Burrough of *Totnes*, greeting.

Towre of London:

To the Conſtable holding the place of the *Tower* of *London*, and alſo the Steward of our *Court* there, greeting.

Truroe.

To the Major and Burgeſſes of the Burrough of *Truroe* in the County of *Cornwall.*

Trematon.

To the Steward of *Trematon* in the County of *Devon*, or to his Deputy, holding the place there, greeting.

Torrington.

To the Major, Aldermen, Burgesses and Steward of the Burrough or Town of great *Torrington.*

Tewkesbury.

To the bayliff and principall Burgesses and Steward of *Tewkesbury* in the County of *Glouceſter.*

Uske.

TO the Major and Bayliffs of the Town or Burrough of *Uske*, greeting.

W.

Wallingford.

TO the Major and Burgesses of the Burrough or Town of *Wallingford*, greeting.

New Windſor.

To the Major, Aldermen, Bayliffs, and Steward of the Burrough of *New Windſor*, in the County of *Berk* or to either of them, greeting.

Woodſtock.

To the Major of the Town of *New Woodſtock.*

Wye.

To the Steward in Court of the Mannor of *Wye* in the County of *Kent*, greeting.

Witteroll,

To the Bayliff in Court of *witteroll*, greeting.

Wincheſter.

To the Major, Bayliſs and Commonalty of the City of *Winton*, greeting.

Worceſter.

To the Major, Recorder, and, Aldermen of

our city of *Worceſter*, greeting.

Wenlock.

To the Bayliff and Steward of the town and liberty of great *Wenlock*, greeting.

Wigmore.

To the Steward and bayliff of the towne and Burrough of *Wigmore*, in the County of *Hereford*, greeting.

Warwick.

To the Bayliffs and Recorder of our Burrough of *Warwick*, greeting.

Weſtbich.

To the Keeper of our Priſon and Caſtle of *weſtbich* or to his Deputy there being, greeting.

Theſe are the ſeverall titles of ſeverall Corporations which happily may ſome of them alter in ſome particular, by reaſon of renuing their Charters and having larger Grants, by which they are incorporated a new, and which may alter the title, of which the Attorney muſt the beſt he may, informe himſelf.

Some few rules have been omitted, which concern what hath been premiſed concerning actions of debt, and may be of much uſe in other actions; which take as followes, and firſt of Amerciaments and of the Eſtreating of them.

NOte, that if the party be arreſted, and at the returne of the Writ the Sheriff return (that he hath taken the body of the Defendant which he hath ready, &c.) and yet the Defendant appears not, you may if the Sheriff will be ſo content, take the bond of appearance given to the high Sheriff, and have it aſſigned to you, & ſo you ſhall be inabled to ſue

the Defendant and his Sureties in the high Sheriffs name, or if you will not ſo do, or the Sheriff will not let you have the bond, then you muſt give the Sheriff a day by rule to bring in the body, &c. in the Prothonotaries remembrance, which if he doe not, he ſhall be amerced, and then you may ſue out an *Habeas Corpus*, with the Prothonotaries Clark, and if hee bring him not in upon that, you ſhall continue amercing of him, and in caſe the Sheriff returne that he is (*Languidus in perſona*) That is to ſay, that he is ſo ſick he cannot bring him, then if it be found a delay, iſſue forth a *Duces tecum*, &c. and ſtill upon the amerciament you ſhall increaſe iſſues untill you force an appearance: But you may have your *Habeas Corpus*, and alſo give your rules for amercing the Defendant as well in the Philizers, as in the Prothonotaries office.

When you come to the eſtreating of your amerciaments you muſt ſee them entred with the Philizer or Prothonotary where the rule was given, and then the clark of the warrants through whoſe office this prothonotaries Rolls paſs, whereby he may take notice of the Defendant his (*Miſericordia*) or being in mercy upon judgments, will certifie the amerciaments as he doth all other of that nature of courſe into the Exchequer. But if it be in the Philizers office, you muſt get a certificate from the Philizer to the Clark of the warrants who will return it into the Exchequer when the Sheriff ſhall, when he paſſeth his account, be inforced to pay it.

NOw if the Sheriff who made the arreſt bee out of his office before you make your proceed or have appearance, you ſhall have a Writ called a *Diſtringas nuper vicecomitem*, that is to ſay, a diſtraining of the late Sheriff, which Writ muſt be made out

out of that office whence the laſt proceedings were had.

NOte, that every Attorney, Clark, or Officer of the Court, may have an attachment of Priviledge, which is to be made in one of the Prothonotaries office, and muſt be made returnable at a day certaine, and is as effectuall on their behalfe as an originall, for if the debt be fineable you ſave the fine, and although the Debt be ſmall, or that it be any other action, yet ſhall you hold him to ſpeciall bayle, and upon a *Cepi* returned, you may proceed to amerce the Sheriff as is in other Proceſſes.

NOte, that if you cannot arreſt the party upon your firſt proceſſe taken from the Philizers, you muſt be ſure to ſee them ſo carefully continued, which coſts you four pence for each terme from the time of taking them forth, for if upon a ſecond writ the Defendant find your Writ diſcontinued, he may enter a diſcontinuance, and the want of any one continuance is Errour at the time of Judgment.

NOte that when you deliver unto the Defendant his Attorney, the copy of your Declaration, you are to ſhew your Bond, Bill, Will, Letters of Adminiſtration, Indenture, or other writings under ſeal, whereby you intitle your ſelfe, and this, for that you have (*A Perfect. hic in curia*) of theſe Writings in your declaration, which is in ſubſtance an acknowledgment of them to be brought into Court, but if the Defendants Attorney receive the declaration and then call not for ſight or hearing of the Bond, &c. and after pleads or takes an imparlance, you are

not bound afterwards to ſhew it him.

OBſerve further, that if you bring your action againſt two or more for one debt due upon one ſpecialty, when you draw your (*Precipe*) for the Curſiter, take heed whether your ſpecialty be joyntly or ſeverally; Joyntly thus, (we binde us our Heires Executors, *&c.*) or (*Obligamus nos, hæredes*, &c.) not having therein the word, either of us, then your originall muſt be, and ſo your Declaration (that they render to the Plaintife ſo much money, *&c.*) but if the ſpecialty be, as is moſt uſuall, joyntly and ſeverally, then muſt your *Precipe* be ſeverall, and then muſt you make delivery, and enter ſo many ſeverall Declarations as there are Defendants in your Writ.

NOte, that in Actions of Debt upon *Emiſſet*, for wares or Merchandizes, or other things upon *Mutuatus*, for money or other thing lent upon an *In ſimul computaſſet*, Actions of Treſpaſſe, Battery or upon the caſe, *&c.* you are not tyed to lay the certaine day; but you may lay it any time after the cauſe of Action accrued, and before the *Teſt* of your Originall, but in an *Ejectione firmæ* the date of the Demiſe muſt be your guide, from which you muſt not vary.

NOte, that as I ſaid before, there are ſome Actions reall, ſome perſonall, ſome mixt, whereof ſome are locall, as tyed to be layed in the County where the cauſe of action accrued; every perſonall Action, as an Action of debt, treſpaſſe, Covenant, Battery, *&c.* may be commenced and layd in any County whatſoever, according as the Plaintif pleaſeth, although both the Plaintif and Defendant

ſendant do dwell out of the ſame; but every reall and mixt action is to be laid in the ſame County where the cauſe of the ſaid Action ariſes as before, or where the Lands and Tenements do lye, *&c.*

The like courſe muſt be taken to continue an iſſue joyned and entred upon the roll from terme to term as before was ſhewed in the caſe of imparlances.

NOte, that when you declare upon ſeverall ſpecialties, in the cloſe of your Declaration upon the (profect. hic in cur.) *you muſt mention their ſeverall dayes.*

NOte alſo, that if ſeverall Defendants appeare by one Attorney, who are bound in a Bond joyntly and ſeverally, if they declare ſeverally againſt them, yet the condition muſt be recited but in one of the Declarations; but if they appeare by ſeverall Attorneys you muſt inſert the condition to all the Declarations.

AND note, that in many of the foregoing actions of Debt, you ſhall do very well, it is the ſafeſt way for your Clyent to make actions of the caſe of them by indebitat aſſumpſit, *where if you have the money lent, or wares delivered,* &c. *the Law implyes the promiſe, and in that caſe the Defendant is barred from waging his Law.*

AND note further, that if you bring an action of debt againſt one within age, he may plead in Bar that he is within age, but in caſe it be for neceſſaries, as Meat, Drinke, Apparrell, &c. *there is no Bar to the Plaintiff.*

And in caſe any one is ſued who is within age, he muſt defend himſelf by his Guardian; and if he will

ſue, it muſt be his *Prochein amie*, or next of kindred.

NOte, that you may ſue an Heire as well as the Executor or Adminiſtrator for the debt due by the Obligor; but in caſe you cannot find any Lands to deſcend unto him, he pleading Nens per diſcent (that is, hath nothing diſcended unto him) he ſhall not be charged.

If money be payable upon demand, there in that caſe it muſt be demanded before you can ſue, and the Plaintiff muſt lay a demand in his Declaration, and the action accrues by vertue of that Demand.

NOte, that if a man ſhall bring an action either upon Bond, Bill, or otherwiſe, upon which he formerly had judgment, the Defendant may plead the former judgment in Bar, and it may be held good.

NOte, how and to what caſes you may plead the Statute of Limitations, which will guide you to bring your actions within the time limited, or to cauſe you to forbear bringing them at all; all actions of Debt, Account, Detinue, Treſpaſs, Replevin, and all other actions of the caſe, unleſs for words, muſt be put in ſuit within ſix years after the cauſe of Action; all Actions of Aſſault, and Battery, and Impriſonment, are to be put in ſuit within foure years and after cauſe of action and all actions of the caſe for ſcandalous words within two years after the words ſpoken, if in any of theſe caſes they be brought after the time limited as above, the Statute of 21 Jacobi pleaded, is a good plea in Bar to any of them, no time limited for ſpecialties.

If

If a man Arreſt another or cauſe him to bee Arreſted in another mans name, without the conſent of the party in whoſe name he is Arreſted, the Statute gives an action of Debt to the party ſo Arreſted.

An action of Debt lies by the Statute of 2. *Edw.* the ſixth, *Cap.* 13. For a Parſon againſt his Pariſhoners for not ſetting out of Tythes, upon which action the Parſon ſhall recover the treble value of the tythes ſo carryed away untythed.

An Action of Debt by the Statute of 32. *Henry* the 8. Chapter the thirtieth, lyes againſt an Attorney for not filing of Warrants of Attorney, in the Cauſes he is towards.

Where no place of payment is ſet down in a Bond, there the Obligormuſt be enforced to find out the Obligee, to pay him the money.

We now proceed to actions of Detinue; wherein we ſhall neede to ſay the leſs, for that the ſame Rules that have been given in actions of Debt, either in relation to the Proceſs or the manner of declaringdo hold in this, the one being in the *Debet* and *Detinet*, and the other the *Detinet* onely: And this action properly lyes where a man delivers Goods or Chattells to another to keep, and the Party to whom they were ſo delivered, refuſes to redeliver them.

And obſerve that in this action of Detinue, you ought to aſcertaine the thing, as a Horſe, Cow, or other Cattell, or Cattells, naming them and making them certaine, for that the Plaintiff, is to recover the thing detained, and therefore it muſt be ſo certaine, as it may be known; for money delivered, an action of Detinue lyes not, but an action of account, and your Originall in this action runs thus;

THE

THE Keepers, &c. To the Sheriff of H. greeting, Command J. G. lately of L. in the county of H. Yeoman, that justly and without delay, he render T. B. one Cow, which he unjustly detaines, &c.

If for a mans Evidences of his Land, in a Box or Bagg sealed up, in which case also an Action of Detinue lyes; then the Writ runs thus,

THat justly and without delay he render him one box, with Deeds, Writings, and other Minuments in the same box contained, which he unjustly detaines, &c.

The Defendant hath not in this action that variety of Plea as before in Debt, the most usuall Plea being (that he detaines not the thing sued for) and upon this he puts himselfe upon the country to be tryed, and the Plaintiff in like manner, *&c.*

Note that in this case, if the Plaintiff have a Verdict, his Judgement is a recovery of the thing detained, or the value thereof; in which case, as also where the Judgment is had by default for want of pleading, there is after the judgment had, a Writ of enquiry awarded, to enquire of the value of the thing detained: Upon the returne of which Writ of enquiry, what value the Jury finde the thing of, and what damages they give him for the detainder of it, is together with increase of Costs entred up for Judgment.

Note, that a man may wage his Law in an Action of Detinue, as formerly in debt was shewn, wherein the same course for the manner of the wager of Law, is to be observed as before.

But it is otherwise in case you declare for one Evidence in speciall, delivered by the Plaintiff to the De-

Defendant; in this caſe the Defendant ſhall not wage his Law.

Note, that in caſe of Evidents detained; it is not proper for the Executor, nor hath he any Right to this Action, but the Heire who is to have the Lands.

Note, that if it be of any thing delivered to be kept, whether by the immediate party that brings the Action, or his Father, Anceſtor, *&c.* Properly this Action lyes, if detained, but otherwiſe an Action of Trover and Converſion.

In the next place we come to Actions of Account.

THis Action lyes upon ſeverall occaſions, as againſt one that is Guardian in Socage, againſt one as Receiver of monies, either by way of Rents or otherwiſe, or as Bayliff of an Office or as Bayliff in general: In all which caſes, you muſt be ſure to frame your Action rightly, by informing your ſelfe for what time he continued bailiff, receiver, *&c.* Of what his charge was, and what it amounts unto, and when he entred upon ſuch his charge.

To begin with Guardian in Socage, your Proceſſe are by Summons, *Capias ad computand. &c.* And you declare upon the Statute of *Marlebridge*, the eighteenth Chapter, of a Plea, that whereas by the common Counſell of the Kingdome of our Lord King of *England*; it is provided for, that the Guardians of the Lands and Tenements which are held in Socage, ſhould render their reaſonable account of the Iſſues and Profits of the ſaid Lands, to the Heires of the ſame Lands and Tenements, when they come to full age, *&c.*

They

The intendment of Baylif is one that hath the Adminiſtration and charge of Lands, Goods or chattels, to make the beſt benefit for the Owner; againſt this Perſon properly lyes an action of account, for the profits which have been made or raiſed, during the time he hath had the care of them.

And obſerve this, that a Baylif may be charged to account, and accordingly doth account, and upon account, nothing doth appear to be arreare in his hands but rather the Plaintif indebted to him, in which caſe the Baylif ſhall bring his Action of debt, for the ſurpluſage of what he hath expended and laid out over and above his Receits.

If I appoint a man to receive money to my uſe, to render me an account, I ſhall have my action of account againſt him for the ſaid moneys, he alſo having his reaſonable Expences and Diſburſements.

Where a man declares againſt one as receiver of moneys; and he muſt aſcertain by whoſe hands the money was received; which lyes not againſt a Baylif, and if the receit be from any hands, other then the party Plaintif, the Defendant ſhall not wage his Law, but if it be alledged to be received by his own hands, and not by another mans hands, in this Caſe the Defendant may wage his Law.

Where there be two Copartners in Merchandize, that occupy and Merchandize in common, by the Statute, one ſhall have his action of account againſt the other, they being both named Merchants.

Where there be two Joynt-Tenants, and the one makes the other Baylif of his Moyety, in this caſe he that makes the Baylife may bring his action of account.

The Executors of a Baylif or receiver, are not chargeable with an Account.

An account may be brought againſt the Collectors

lectors, for money given to the uſe of the poore.

Note that if a man brings his Action of Account againſt one as Bayliff, and the Defendant to his action pleades, that he was never his bayliff to render an account &c. And upon that Iſſue joyned, and upon the tryall a Verdict for the Plantiff, in ſuch caſe the Judgement is, that the Defendant ſhall account with the Plaintiff of the time and profits aforeſaid, &c. And that hee be in mercy, becauſe he did not ſooner account.

Upon his Verdict and Judgement, the Court aſſignes Auditors, before whom the Defendant is to account upon ſuch a day or time, as the Auditors ſhall appoint to heare the account; and in the *Interim* the party either puts in Baile to account, or otherwiſe ſtands committed to the Fleet.

NOte that if the defendant acknowledg the action and that there be Auditors aſſigned by the court, in this caſe hee ſhall not bee inforced to put in Bayle.

There are two Pleas moſt uſuall in theſe actions of account, the one is (that he was never his receiver, &c.) And the other (that he hath fully accounted, &c.)

Note that the Auditors aſſigned by Court, have power upon his accounting, to make him allowance of what reaſonable Diſburſments and charges hee brings in, as laid out, and if after the Defendant be over and above in arreare found by the Auditors the Plaintiff may bring his action of Debt, to which as is before ſaid, the Defendant ſhall not wage his Law.

In an action of account a man may plead doubly, as where he ſtands charged to have received ſeverall moneys, ſeverall times from divers Perſons, there

there he may plead as to part (that he ſtood not bailiff, *&c.*) and as to the other part (that hee hath fully accounted, *&c.*) Upon the joyning of which Iſſue, it being double, you ſay; Therefore as to the trying as well of this Iſſue as the aforeſaid other iſſue formerly joyned, command is given to the Sheriff *&c.*

Note that an Action of Account lyes againſt a Church-Warden after he is out of Office, by the ſucceeding Church-Warden to be brought.

Where an Infant within the age of fourteene yeares, being ſeized of Lands in Socage tenure, a Stranger enters into the Lands of the Infant, and takes the Profits of the ſame, though he be not the next of Kindred nor Guardian in Socage, yet the Infant ſhall charge him as Guardian in Socage; and it is no Plea for him to deeme that he is the next of Kindred, but he muſt anſwer to the taking of the profits, the Writ being that he ſhould render his reaſonable account of the Iſſues and profits, comming of the Lands and Tenements in S. which are held in Socage, *&c.*

Note that if it be for the profits of the Land, for the time after the Infant is come to fourteen yeares of Age, he muſt be ſued as Bayliff, and not as Guardian.

Note alſo, that if any man have cauſe of Action of Account againſt any as Receiver and bayliff, and dye, his Executors ſhall have this action.

This Action may likewiſe be brought in the County where the cauſe of Action ariſes, and if ſo brought, it may be removed into the common Bench, at the ſuit of the Plaintiff, by a *Pone*, without ſhewing the cauſe in the Writ, but it ſhall not be removed at the ſuit of the Defendant, without ſhewing the cauſe in the Writ of *Pone*, as if the Defendant have releaſe,

and

and then it ſhall bee named in the *Pone*, &c.

An Apprentice ſhall not be charged with an action of account, but if a man have a Servant whom hee commands to receive Money, the Maſter ſhall have a Writ of account againſt him, if hee were his Receiver.

The Fees incident to this Action, and the proceedings thereupon, follow in a table amongſt others.

Actions upon the Caſe.

THeſe Actions are very numerous, and grounded upon ſeverall occaſions, as for ſcandalous words, for promiſes not performed, for ſpeciall Nuſances, &c. The Proceſſe upon them are; firſt an Originall, and then by way of *Capias*, if you can arreſt upon the firſt Proceſſe, if not, then you may proceed to the Outlawry, as before in Debt, only the charge will be more in reſpect of the length of your Proceſſe, and for returne of thoſe Writs, you muſt returne (that the Defendant hath nothing within my Bayliwick whereby he may be attached) this for the Originall: And for the *Capias* and other Proceſs (that the Defendant is not found within my Bailiwick).

In Actions of the Caſe for words, you muſt carefully obſerve what the nature of the words are, what they import, the manner of ſpeaking of them, and what the party Plaintiff may be any wayes damnified by the ſpeaking of them, what his credit was, and how impaired, and take the whole words as neere as you can; and before you bring your Action let the witneſſes ſet downe the words as they were ſpoken, and as they will be able to prove them, and the time and place when and where they were ſpoken, and before whom. This Action oftentimes miſcarries, by

reaſon the Attorneys weigh not well whether the words be actionable or not, and many times, though ſome part of the words taken by themſelves may be actionable, yet the ſubſequent words may quallifie the ſenſe or the precedent; as where a man ſaies of another, that he is a thiefe, and hath ſtolne ſomething of ſmall or no value: For generally where one ſtands charged by words for any theft, which is onely criminall and not capitall, there the partie plaintiffe ſhall never enter Judgment, although he brings his action.

An action of the Caſe lyes againſt the Husband and Wife for words ſpoken by the wife, but in caſe the Wife be arreſted and not the Husband, you cannot declare.

This Action lies in theſe ſeverall caſes following.

WHere one becomes Surety for another at his inſtance and requeſt upon Bond, and he ſaveth him not harmeleſſe, but the ſurety is inforced to pay the money, in this caſe he may bring his action upon the caſe, wherein he muſt recite how ſuch a time, at ſuch a place, at the inſtance and requeſt of the Defendant, he became bound to ſuch a one in ſuch a ſum conditioned for the payment of ſuch a ſum at a day then to come, and that the Defendant in conſideration thereof, did aſſume and promiſe to ſave him harmeleſs; that notwithſtanding the promiſe aforeſaid, he hath beene ſued by the Obligee, and ſhew how and where and what he is damnified.

It lies where a contract is made betweene two by word of mouth, either for the delivery of Corn, Cattell, or any Merchandize whatſoever, and the party that promiſes ſo to deliver it, makes breach.

It lies for money borrowed, when you would make ſure

ſure the Defendant ſhould not wage his law.

NOte, that in all Actions of the Caſe upon ſpeciall promiſes you muſt be ſure to lay a good conſideration to ground your promiſe on, otherwiſe it is ſaid to be *Nudum pactum*, as where it is for money owing by a ſtranger, and his Friend promiſes payment upon forbearance, there you muſt lay, that whereas ſuch a one was indebted to the plaintiff in forty pounds, and that for the more ſpeedy obtaining of the ſaid Debt; the Plaintiff intended to implead him, and that in conſideration the Plaintiff would forbeare to ſue or implead the party owing the Money for ſuch a time, the Defendant himſelfe would pay it, in caſe the other did not.

It lies for money promiſed in conſideration of marriage, wherein the Plaintiff muſt aver, that he married her ſuch a time.

To call a man a Baſtard if he be the Eldeſt Son, and in a capacity at the time of the words ſpoken, to inherit an Eſtate after his Father, and be diſinherited, an action lies.

To call a maid Whore, or to ſay ſhe hath a Baſtard, whereby ſhe loſeth her preferment in marriage, is likewiſe actionable.

To call a married wife whore would not formerly hold action at Common Law, but in *London*, by cuſtome it hath, but *Quære* whether it will not now be actionable in reſpect of the Statute, that makes the crime capitall.

If a man ſpeaks ſcandalous words of any, for which is action brought againſt him; if the Defendant be able to make proof of the words ſpoken, he may plead a ſpeciall juſtification; but if he plead ſuch plea, and make it not good, the damages wil be much aggravated thereby.

If the Defendant ſpake other words then what are layed in the Declaration, he muſt plead eſpecially, and traverſe the word layd in the declaration; but quære, whether in both caſes by this late act he may not plead the generall iſſue, and give the ſpeciall matter in evidence.

Where the Defendant pleads the generall iſſue which is, not guilty, for words ſcandalous, &c. there it reſts on the Plaintiffs part, to prove the words as he hath laid them.

It hath been uſuall, and yet is the courſe to arreſt upon a *clauſum fregit*, & then upon filing a new Originall, to declare ſpecially in an Action of the caſe.

It lies for the hire of a horſe, which is returned back, and the hire unpaid.

It lies likewiſe, where a man abuſeth a horſe by immoderate riding, or otherwiſe by miſuſing of him.

The party likewiſe that hires a horſe, if he have given earneſt for the Horſe, and that it bee promiſed him, it ſhall be delivered unto him by ſuch a time, and then he refuſes to deliver him, whereby he is diſappointed.

It lies for the Maſter againſt his Servant, for leaving of his ſervice, before the time contracted for be expired.

Likewiſe for a ſervant in caſe the Mr. without juſt cauſe ſhall turne him out of ſervice, before his time be expired.

It lies for a mutuall contract made between two, by word of mouth, and to bind the ſame, a piece of money is given by the one to the other in earneſt; now if either will not perform what is agreed upon, the other may bring his action of the caſe.

It lies, where a man upon ſale of ſheep, warrants them ſound, and they prove rotten, or otherwiſe unſound.

An

An action of the case lies where one sells a Horse and warrants him to be sound, and the horse proves to be unsound at the time of the sale.

It lies against a Farrier, who shooes a horse and pricks him, whereby he grows lame.

It lies where a man, who is a Goaler, lets a Prisoner at large, and this as well as escape.

Where a man hath made a Distress of Cattell, &c. and is driving of them to the Pound, and another comes and rescues them, an Action of the Case lyes.

It lies against any that shall entice his Covenant-Servant from him.

If a man lose goods brought into a common Inne, or Hostrie house, an Action of the Case lies.

If a man deliver goods to a Carryer, and agree upon the rate for carrying, and they are lost, and miscarried, an Action of the Case lies.

It lies for stopping of a Water-course through his Ground, whereby the Plaintiff watered his Beasts and did other necessaryes, and if this be stopped either by Stones, Turfes, or otherwise diverted, an Action of the Case lies.

If a man stop up a way, whether Cart-way or Foot-way, and another hath right to that way, and can prescribe to it, an Action of the Case lies.

Where a man is to pay money, and gives a Bill of Exchange which is not accepted, but afterwards comes to bee protested, an Action of the Case lies.

Where a man sells another mans Cattell or goods, or Merchandizes, and warrants them to be his owne, an Action of the Case lies.

An Action of the Case lies against a Taylor, who doth undertake to make cloathes, and spoyles them, so that they are not usefull for the Party they are made for.

It lies against an Executor upon the promise of the Testatour, provided there be a consideration to ground the promise on.

It lies in the behalfe of a Commoner against any that hinder him from use of his common.

Where a man hath an Office granted unto him, & another either disturbes him in the Execution of his place, or otherwise receives the profits due to the office, an action of the case lies.

It lies against a cheat, for playing with false Dice.

Where a man disturbs the keeping of a Court Leet, an Action of the case lyes.

It lies against an under-Sheriff for an ill or false return.

It lies against an under-Sheriff, who makes returne of Writs within any Liberty granted to another.

It lies on the behalfe of a Physitian or a Chyrugeon for Physick or performing a cure.

Where a man builds a house so neer his neighbours, or raises any shed or other out-house, or laies piles of wood, or Stacks of hay or corne so neer his neighbours windows, as that they stop up his light, an action of the case lyes.

And for any other nusance, whereby a man is any wayes damnified, as where a man builds a stable or privy house so neere his neighbours house, that the smell thereof annoyes him.

It lies against an under Sheriff, for taking greater Fees then is allowed by the statute.

It lies against one who shall break downe a mans Wall or Sluce, whereby his land comes to be drowned.

It lies for selling corrupt Wine, without warranting it to be good, for that it is prohibited by law.

It lies where a man hath pawned goods and tenders

ders the money due, and Demands his Goods, and it will not be accepted.

It lies for not carefully keeping fire, whereby a mans house who is a neigbour comes to be burned either in part or whole.

It lies for digging of Lime pits.

It lies against one for keeping a dog that worries sheep.

It lies for a Soliciter, for his Disbursements and Fees.

It lies so many severall wayes for promises, as that they are not to be named in particular, but are to be drawn as the case falls out, onely observe some particulars following.

It lies where a man for money lent, upon forbearance promises to become security.

It iies upon a promise to pay money for Land contracted for.

It lies against any one that makes an arrest in a liberty not being Bayliff.

It lies for the Lord of a Mannor in ancient demesne against a Tenant that levies a fine above in the Common Pleas.

It lies in the nature of an action of conspiracy for one indicted of Felony, and afterwards acquitted.

It lies against a Steward of a Court for not taking security in Replevin.

It lies against the Husband and Wife, for meat, drink, &c. had by the wife before the intermarriage,

It lies for a Keeper of a prison for Meat and Drink had by a prisoner.

It lies against an Attorney or Clark of the Kings Bench for appearing or filing a bayle without Warrant.

It lies likewiſe againſt an Attorney that ſhall do any act in any mans name, whereby the party is prejudiced in relation to the Law, without Warrant had.

It lyes for erroneous proſecuting a Writ of Execution.

It lyes alſo againſt an Officer who takes money by extortion.

It lyes for a reſcue made upon a *Capias*, or other proceſſe whatſoever.

It lyes againſt the Sheriff for not returning a *Venditioni exponas*.

It lyes likewiſe on the behalfe of an Executor againſt an under Sheriff, for returning falſly a *Devaſtavit*.

If a man ſells cloathes, and warrants them to be of ſuch a length, if they hold not out accordingly, he which buyes them, may bring his action upon the caſe.

If one takes a mans cattell, and another take them from him, an action of the caſe lyes by way of Trover and converſion for the cattell.

An action of the caſe lyes againſt Tenant at will, who commits waſt by burning houſes, or pulling them down, but not an action of waſt.

An action of the caſe lyes againſt the Bayliff for killing or ſpoiling any of his Maſters cattell.

If a man deliver to another his Sheep to dung his Land, or his Oxen to Plow his Land, and he killeth them, an action of the caſe lies.

An action of the caſe lyes againſt a Sheriff, where the Plaintiff hath a Charter of exception, that he ſhall not be impannelled upon any Jury, and ſhewed that to the Sheriff, and yet he impannells him.

If the Sheriff upon a writ of ſecond deliverance to the Plaintif of the diſtreſſe, and will not return the

Writ

Writ, ſo that the Defendant may conſtrain the Plaintiff to come and declare, ſo that he may avow, the Defendant ſhall have his remedy by action of the caſe againſt the Sheriff.

Actions of the caſe lye againſt the Sheriff, where he makes a *Precipe* to one who is no Bayliff of the Franchiſe, who returns a Jury which is quaſhed, to the damage of the Plaintiff.

Where a Guardian pleads falſely for an Infant, or vouches one who is not ſufficient to render in value to the Infant, the Infant ſhall have an action of the Caſe.

An action of the Caſe lyes againſt a Chirurgeon, who undertakes to cure a man of a wound, and neglects it, whereby a man grows worſe, and makes it through his negligence incurable.

Where a man promiſes in conſideration of an hundred pounds, or any other ſumm in hand paid, to enfeoff another in ſuch and ſuch Land, by ſuch a day, and doth it not, he ſhall have an action upon the Caſe.

There are many other caſes wherein action of the Caſe lyes, which cannot be certainly recited, in reſpect of the various occaſions of them; but in theſe before recited, and all others, the proceed is one and the ſame, onely the Declarations muſt vary as your Caſe requires; after your Declaration drawn, upon appearance made, you deliver it to the Attorney for the Defendant, and moſt uſually with an Imparlance, which done you enter it accordingly of that Terme you deliver your Declaration, upon one of the *Prothonotaries* Rolls, and then Docquet it, and keep the Number Roll by you, whereby you may be able to continue your Imparlance if need be.

The Terme following you give a Rule within ſome ſhort time of the beginning of the Terme, with the

Secondary of the Office for the Defendant to plead by ſuch a day, or otherwiſe the Plaintiff have Judgement.

There is not much diverſity of pleading to this Action, eſpecially ſince the late Statute, the moſt uſuall Pleas are, either, not guilty, or in caſe of promiſes, *Non aſſumpſit.*

Either of theſe being pleaded, you make up a Copy of the Iſſue, and deliver it to the Defendants Attorny, who is to pay for the Copy of the Iſſue, as before for the Declaration, four pence for every ſheet, and alſo to pay for entring his Plea two ſhillings, that done, if you intend to try it, you muſt give warning to the Attorney of the Defendant when you intend to try it, and in order thereunto make out your *Venire Facias*, and get it returned by the Sheriff, and then ſue out your *Habeas Corpus*, and ſo proceed to the making of your Record; and in all other things, both before, at the tryall, and after, as you are directed before in the caſe of Debt.

But in caſe they plead not, but let it goe by default, then upon the entring up of your Judgment you are to award a Writ of Inquiry of Damages, returnable, ſome returne the Terme following, which done, you make out your writ and procure it to be ſigned with the *Prothonotary*, and then Seale it, and be careſull to keep your Number-Roll likewiſe of your judgment when you have Docquetted it.

Note, that you are to give notice to the Attorney of the Defendant of the time when you intend to execute your Writ of Inquiry, if you practice fairely.

And having ſo done, and brought your Writ under Seale, and delivered it to the Sheriff, you may proceed upon it according to the time agreed on.

The Sheriff to ſummon an Inqueſt, who are to in-

inquire what Damages the Party Plaintiff hath ſuſtained, as alſo for his Coſts and Expenſes of Suit.

The Inqueſt having paſſed, the Sheriff draws a ſhort ſchedule, and annexes it to the Writ of Inquiry, and returns the Writ of Inquiry, which is called an Inquiſition, which he delivers you upon payment of his and the Juries Fees.

Having your VVrit of Inquiry thus returned, and the Inquiſition annexed, you muſt bring it to the Prothonotaries Office and there take it out in the Bill of Pleas, together with the Return and Inquiſition, and give a Rule upon it, which done and the Rule out, you carry to the Prothonotary, and he taxeth your Coſts, and then you pay him for it, and carry it to the Clark of the Judgments, and be ſure you give him likewiſe your Number-roll, and Term when the Judgement was entred, and he will make you out, either a *Capias ad ſatisfaciendum* or a *Fieri facias* for your Damages and Coſts. The Fees incident to this action, you will follow.

Actions of Trover and Converſion.

THis Action is called alſo an Action of the caſe and differs not at all in the Proceedings from what hath been ſaid before, in Actions of the Caſe.

It properly lies where the Defendant hath found any of the Plaintiffs Goods, and refuſeth to deliver them upon demand, or where the Defendant comes by the Goods, by the delivery of any other then the Plaintif, wherein he ſhall recover as much damages as the Goods are worth.

It is not as in an Action of Detinue, that the thing it ſelfe, whether Goods or Cattell ſhall be recover-

ed,

ed, but Damages to the value of them.

Note that a demand is absolutely necessary to this action before it be brought.

In this action if the Defendant plead that he is not guilty, which is the most generall Plea in this action, the property of the Goods must be proved to have been in the Plaintiff, before such time as they came to the Defendant his hands.

This action is now very usuall, and takes place instead of actions of Detinue, for in them the Defendant was at liberty to wage his Law, whereas this debars him.

In many Cases a speciall justification may be pleaded to an action of Trover, as where a man justified the taking of it as a stray, and refuserh not to deliver it, being a Horse, Sheep, or the like, upon payment for their Meat and keeping.

Many times in this action, the arrest is made upon a *Clausum fregit*, and then file a new Originall, and so declare in Trover; or in case you cannot arrest, you may sue to an Outlawry.

Where a man brings his action of Trover and conversion against another, with whom he findes any of his Goods lost or purloyned, here if the Defendant brought them in open Market or Faire, and that they be tolled in the Book, this alters the property of the Goods, and I can never recover them, but this must be specially pleaded.

Otherwise it is where they are brought privatly and not in open Market, or Faire, by this there is no property altered.

It is generally held, a mans shop is said to be open Market; but if Plate be stollen and sold to any other Tradesman, or in any other shop, then the Goldsmiths to whom it is proved to buy it, it hath been held the property is not altered, but that the Party

losing

loſing of it, may recover the value of it in Damages by action of Trover.

All the proceedings in this action are generally the ſame immediatly before going in all particulars, whether it be by triall at the Aſſizes, or by Writ of Inquiry; which Writ of Inquiry, Inquiſition thereupon, as that alſo in caſe are to be filed by the Clark of the judgments, with the *Cuſtos brevium*, after judgment entred up.

In this action you muſt be carefull of the dayes when you lay the Plaintiff to be poſſeſſed, and what time after you lay it to be loſt, and what time after the Converſion.

Action of Treſpaſſe and Battery.

THis action lyes where a man aſſaults another, and ſtrikes, kick, or beat, or do him any manner of violence, either with hand, foot, or with any weapon, or throw any thing at him, or upon him, whereby he is hurt.

The Writs in Battery are by way of originall *Capias*, *alias*, *&c.* If not arreſted upon the firſt Proceſſe, you may take out a *Capias* by continuance, or otherwiſe ſue to the Outlawry.

Your originall writ runs thus: wherefore by force and armes on him the ſaid Plaintif at *L.* he made an aſſault, and him beat, wounded, evill entreated, ſo that of his life he did deſpair, and other harms to him he did, to the great Damage of the Plaintiff, and againſt the Peace, *&c.*

In ſome caſes you add (after wounded and Impriſoned) in caſe the Party were kept in Priſon and then in the Court, you name for what time.

In caſe you have the Party arreſted, you muſt inform

form your ſelfe of the time when the Battery was done, and what the manner of the Battery was, and with what Weapons, and whether the Party were Impriſoned, and what Damage your Clyent ſuſtained.

This done, and having an appearance (which is uſually made on the Philizers Roll, if the Attorneys take not one anothers word in the Countrey, or put their hands to the Sheriffs Warrant for to appear according to the returne of the Writ) you draw your Declaration, which is no more but a recital of the writ above, only in the ſecond place, when you count upon the Writ, you are to inſert the time, and when you ſay, by force and armes, you then add (that is to ſay, with Swords, Staves, and Knives) and if the Party were Impriſoned, you then ſhew, how long, and whether he were forced to pay a fine for his redemption: your Declaration drawn muſt be delivered to the Defendants Attorney, as before in caſe, *&c.* And you muſt enter it with an Imparlance, if you give one.

And you are to give Rules, the Imparlance out, and call for anſwer; and make up your Iſſue, or for want of pleading, enter up Iudgement by default, and take your writ of Inquiry; in all things obſerving the Rules before given, either for tryal or proceeding with your Writ of Inquiry.

The generall Plea to this action is, not guilty, but there are ſeverall other Pleas, in juſtification of a mans ſelfe, as where it is done in defence of a mans perſon or Goods; alſo a man may juſtifie, in the defence of the perſon of his wife, Father, Mother, or Maſter: But note, that if it be not in theſe Caſes, or in the Maintenance of Juſtice, if he be not conſtrained by a neceſſary cauſe, he is puniſhable if he beat another.

If a man come into anothers House against his will, and there offer violence either to his Wife, Children, Servants, or to any of his goods, he may lawfully thrust him away, to hinder him, and if hee bring an action in such like case, he may plead specially as the Case was, and conclude that to hinder him, or put him out of doors, he did (*Molliter manus imponere*, &c.) that is, softly lay his hands upon him.

To all such speciall Pleas it is usuall they should be pleaded under Councels hand.

Where a man for preservation of the peace, goeth about to part a Fray, by holding either of the parties from striking, in Case the Party that was so holden, doe bring an action of Battery, the Defendant may plead specially, that to preserve the person of one from killing, and preservation of the Publike Peace, he did come in to ayd him, and did softly lay his hands upon him.

To this the Plaintiff may reply, that he did it of his own proper injury, without any such cause, and then the Defendant must maintain his Plea, with an (*ut prius dicit*,) And of this he puts himselfe upon the Country, *&c.*

There is a Plea called (*Son assalt demesne*) which is, where a man justifies in his owne defence, as being first struck, which falls out to be very frequently pleaded. Thus much for Battery.

Of Trespasse in generall.

THese are the most generall Actions next Actions of Debt, that are brought, and vary in the originall Processe and Declaration, according as the Trespass

Treſpaſs is; and the cauſe of Action thereby accrued.

It may be brought for breaking the Cloſe, without adding any manner of other Treſpaſs.

Sometime for breaking both Cloſe and Houſe, in which caſe the Originall is; Wherefore by Force and Armes, the Cloſe of the Plaintiff at L. he brake and other harmes to him he did, to the great damage of the Plaintiff, and againſt the pulique Peace, &c.

You may lay it for ſeverall Treſpſſes at ſeverall dayes, or one Treſpaſs with (a *Continuando*) that is, continuing of it for ſome certain daies or weeks, from the time laid in the Declaration.

It lies for chaſing of Cattell, whereby they either dyed, or were bitten or worryed with Doggs.

It lies for taking away of Pales, Poſts, Rails, breaking of Hedges or Fences.

It lies for digging in a Leaden Mine, and taking away the Oare, or for breaking the Ground, and digging there.

Where a man breaks another mans Dove-cote, and takes away Pigeons, an action lies.

For drawing a Cart and Horſes over any mans Ground, where there can be no way preſcribed for, an Action of Treſpaſs lyes.

It lies for fiſhing in an other mans Ponds, and for breaking the Pond, and letting out the water.

For chaſing in a free Warren, an Action lyes.

For breaking of a Cloſe, mowing of Graſs, and eating of Corne with a mans Cattell, this Action lyes.

For Treſpaſs done in a Garden, by plucking up by-

by the Roots, *Rosemary*, *Lavender*, and other Herbes.

It lies in the behalfe of a Minister against any that hinder or oppose him, in carrying away of his tithes.

It lies for impounding a Horse or other cattell, and not giving them sustenance in the pound.

It lies for taking away Hay in cocks, and Corne in sheafes.

It lies for taking away of Horses or any other like Cattell, wherein you say (of the price of such, &c.) or if goods and Chattels, then you say, to the value of so much.

It lies for breaking of the Doores, Windowes, Walls or other forces of a house.

An action of trespass lies, where one having right to a Toll in a Market, and imployes his servant to gather it, and he is disturbed in it.

It lies likewise where a man hath right to keepe a Fayr, and is hindred.

It lies on the behalfe of one that hath returne of Writs within his Hundred, and hath a Disturbance by any.

And where a man hath right to keepe a Court Baron, and is any wayes disturbed, this Action lies.

For digging in a mans Cole mines, and carrying away Coles, and for digging in a mans quarries, he shall have his Action.

WEE have now given you some particular hints in what case an action of trespass lies, I shall now proceed to the processes thereupon, which as I told you, are by Originall, in the first place *Capias*, in case you can arrest them, or otherwise to the Outlawry

If you arreſt the party, and have an appearance, you muſt draw your Declaration, wherein you muſt be ſure to take perfect notice from your Client of the day when the Treſpaſſe was done, that ſo you may lay it to be done before the *Teſte* of your Originall, and likewiſe how long the treſpas continued, that ſo if there be Occaſion, you may lay it with a *Continuando*, and whether there were not ſeverall Treſpaſſes at ſeverall dayes, and the place where the Treſpaſſe was done, in that Town or Pariſh, for from thence your *Venue* muſt ariſe.

To this action the moſt generall Plea is, not guilty, yet is there much ſpeciall pleading by way of Juſtification or otherwiſe, but moſt uſually that is after the common Barre hath beene pleaded in an Action of Treſpaſſe, and that there be a new aſſignment of the place, then they plead as to the Treſpaſſe in the place of new aſſignment, either in juſtifieation for a Foot-way, or a Cart-way or ſome other ſpeciall Plea, &c. Or not guilty to the new aſſignment: this new aſſignement is uſed very oft, to cleere a Title, which upon it comes in queſtion; here in caſe the Title appeare to be the Plaintiffs, hee ſhall recover Damages.

This action brings to the party Plaintiff if he recover, Damages, but not recovery of any poſſeſſion, as in the caſe of an *Ejectione Firmæ*.

All manner of Proceedings after the Declaration any waies had, relating to this action, whether by tryall of *Niſi prius*, or Writ of inquiry, upon default or confeſſion, are altogether the ſame with what hath been delivered, as to actions of the caſe.

Action

Actions of Covenant.

THis Action lies where an Agreement or Compact is by Deed, Articles, or other Writing, ſealed betweene two perſons, where every of them is bound to the other, to performe certaine Covenants for his part, and if the one of them holdeth not his Covenant but breaketh it, then hee which findeth himſelfe agrieved, may have thereupon a Writ of Covenant: And Covenants are either in Law or Fact, or

A Covenant in Law is that which the Law intendeth to be done, although it be not expreſſed in words, as if a man demiſe any thing to another for a certaine Terme, the Law intendeth a Covenant of the part of the Leſſor, that the Leſſee ſhall hold all his Term againſt all lawfull Incumbrances.

Covenant in fact, is that which is expreſly agreed between the parties.

Alſo there is a Covenant meerly perſonall, and a Covenant that is reall, as ſayes *Fitzherbert* in his *Natura brevium*, Fol. I. 5.

Covenant reall, is where a man tyeth himſelfe to paſſe a thing reall, as Lands or Tenements, where a man covenants to levy a fine of Lands; *&c.*

Covenant meerly perſonall is where a man covenants with another by Deed, to build a houſe or to ſerve him.

Note well, that no Writ of Covenant ſhall bee maintainable without a ſpecialty, but in the City of *London* or in ſome other place priviledged by cuſtome or uſe.

Note, that a man may bring an action of Covenant upon a Letter of Attorney.

Where a Covenant personall is made to any and the Covenantee dyes, the Covenant being unperformed, here his Executor shall maintain an action of Covenant.

The Heire shall likewise maintaine an action of Covenant, where one had covenanted by writing with his Father, to Enfeoff him in certaine Lands, and doth it not.

The Processe incident to this Action is an Originall which is a summons, for in this Action as in Debt, you say (was summoned, and not attached.)

Your Originall runs thus (Of a Plea that he hold the Plaintiffs Covenant between them made, according to the force, form, and effect, of certain Indentures between them made, &c.)

After your Originall taken out, you may have a Capias, and if you arrest him not upon the Capias, you may proceed to the Outlawry, as in other cases.

Upon appearance had, you must declare as in the example following, wherein you must observe, that in this Action as in Debt, you have an (*Alias dictus*) which must be made literally to agree with the Indenture.

Essex. ff.

I *Glover*; late of *&c.* otherwise called *John Glover*, Gentleman, was Summoned to answer *E. M.* of a Plea, that he hold to him Covenant between them made, according to the force, forme, and effect of certain Indentures between them made, &c. And whereupon the said *E.* by *T. G.* his Attorney saith, that whereas by a certaine Indenture made (such a day, yeare, and place,) between him the said Plaintiff, on the one part, and the said I. of the other part, which other part signed with the Seale of the said

ſame I. the aforeſaid *E.* brings here into Court, the Date whereof is the ſame day and year: it is teſtified (reciting the whole Indenture, till you come to in Witneſſe whereof) as by the ſame indenture more fully appeareth: And the ſaid Plaintiff ſaith, that although hee hath fulfilled and performed, all and ſingular the Covenants and Grants in the indenture aforeſaid above ſpecified on his part to bee fulfilled and kept in Fact, the ſame *E.* ſaith, that within the aforeſaid ſeven years after the making of the indenture aforeſaid, *&c.* (that is to ſay) ſuch a day and year, one *T. D. Eſq.* then being of the learned Councell of him the ſaid *E.* at *B.* aforeſaid, in the County aforeſaid, did deviſe and cauſe to be written for further aſſurance of the aforeſaid Cloſe with the Appurtenances, to be made to the ſaid *E.* a certain Writing of releaſe of the aforeſaid Cloſe of the Appurtenances, to be made to the ſaid *E.* by the ſaid *J.* in which ſaid Writing it was contained, that the aforeſaid *J.* ſhould remiſe, releaſe, and alwayes for himſelfe and his Heires, quit claime to the ſaid *E.* and his Heires, the whole Right, Title, and Claime which he had, or at any time from thence following might have, of an in the aforeſaid Cloſe with the Appurtenances: And the ſame *E.* afterwards the ſame day and yeare at *C.* aforeſaid, did requeſt the aforeſaid *J.* to ſeale, and as his Deed to deliver to the ſaid *E.* the aforeſaid Writings of releaſe in forme aforeſaid deviſed; and the aforeſaid I. that to doe, then and there altogether refuſed, againſt the forme of the indenture aforeſaid; yet the ſaid *J.* although often required, hath not held the Covenant aforeſaid; for that hee the ſaid *J.* and his Heires, and all perſons and their Heires, claiming in or by the aforeſaid *J.* at any time, during the ſpace of the aforeſaid ſeven yeares, upon reaſonable demand thereof,

to them or any of them to be made, ſhall make, permit, & acknowledge, or cauſe to be made, permitted, & acknowledged, all & ſingular act & acts, thing or things for the better and further aſſurance and ſure making of the Premiſes with the appurtenances to the ſaid *E.* and his aſſignes, as by learned Councell of him the ſaid *E.* his Heires or aſſignes, ſhould be reaſonably deviſed, but hath broken it, and to hold that covenant to him the ſaid *E.* hitherto hath denied, and yet doth deny, whereupon he ſaith that he is damnified, and hath damage to the value of two hundred pounds, and thereupon he brings his Suit, *&c.*

Here you have an action of Covenant brought for making further aſſurance; wherein you ſee the laying of the breach, and what the further aſſurance is, and indeed the whole difficulty of an action of Covenant, lies in the laying well the breach.

To this the Defendant pleads as followes.

And the aforeſaid *I.* by *F. N.* his Attorney comes and defends the force and injury when *&c.* and ſaith, that the aforeſaid *E.* did not require him the ſaid *I* to ſeale, and as his Deed to deliver to the aforeſaid *E.* the aforeſaid writing of releaſe, for further aſſurance of the aforeſaid cloſe with the appurtenances, to the aforeſaid *E.* to be made, as the aforeſaid *E.* by his Declaration aforeſaid above hath ſuppoſed, and of this he puts himſelfe upon the country, and the aforeſaid *E* in like manner, therefore command is given to the Sheriff, that he cauſe to come here on the morrow after the holy Trinity, twelve, *&c.* by whom *&c.* and who neither, *&c.* to recognize, *&c.* Becauſe as well *&c.*

Obſerve by this iſſue you ſee joyned, that where the Defendant takes iſſue, you ſay, (and of this he puts himſelfe upon the country) and where the Plaintiff

tiff takes the iſſue, you ſay (and this he prayes may be inquired of by the Country)

In this action you recover Damages aſſeſſed by the Jury for what you are damnified, by the breach of Covenant and coſts of ſuit.

Note, that an Adminiſtrator may have an Action of Covenant, as well as an Executor, and the Writ of Covenant ought to be brought in the County where the Deed is made; but if it be brought in another County, then where the Deed was made, the party Defendant ſhall not have a Plea in bar to the VVrit, unleſſe that the Deed bare date in another County.

A VVrit of Covenant alſo lyes againſt pledges, who become ſureties that another man ſhall perform a covenant.

The aſſignee of the Leſſee ſhall maintain an action of covenant againſt the Leſſor, although he be not ſpecified in the ſaid Deed of Covenant to be an aſſignee.

Having given you before, an iſſue joyned in an action of covenant, you are (in caſe you proceed to tryall) to make out your *Venire facias* as in others, with this difference, onely that you ſay, (of a Plea of covenant broken) and then your *Habeas Corpus*, and the reſt of your proceedings in order to tryall, as before in other actions.

But if after your Imparlance and rule being out, the Defendant plead not, you muſt take your Judgment by default, which is to be ſigned by the *Prothonotary*, and then you are to have your VVrits of Inquiry, which be awarded upon your Iudgment Roll, and ſigned by the *Prothonotary*.

There may be one or more breaches aſſigned, as the caſe may require.

But in an action of debt upon Bond for performance of Covenants, he can assigne but one.

NOw because within the Title of that Covenant reall, fall VVrits of Covenant, it will not be amisse to insert here the form of suing out a fine.

And first how to acknowledge a fine at the Barre in the Court.

IN the first place you are to take notice, that it is in the parties Election, whether they will acknowledge a Fine in open Court or before the Lord cheif Justice of the common Pleas, at his Chamber, or elsewhere out of the Court, as before some Judge of the same Court, or before the Iustices of Assize in the Country, when they go *Circuit*, or before Commissioners in the Country by vertue of a speciall *Dedimus potestatem*, to give them authority to take the knowledge thereof, none of all those saving the Lord cheife Iustice, having power to take without *Dedimus &c.*

If the acknowledgment be to be made in open court, you must have your Writ of Covenant made by the Cursiter, and there compound it at the Office of Alienation, where it must be likewise indorsed and entred, and so fitted for the Seal, to which must be annexed your *Precipe*, and concord in Parchment which you must deliver to some one of the Serjeants at Bar to draw it for you, and then you pay him three shillings four pence, the other Fees payable in Court are certain and are not great; for by the acknowledgment in Court, the Client saves divers Fees and charges, which otherwise the Caption would cost.

The

The Caption being paſt, you proceed with your *Precipe*, and Concord, and Writ of Covenant, through the Alienation Office, Kings Silver, *Cuſtos Brevium*, and Chirographer, as hereafter is ſhewed in other acknowledgments.

How to acknowledge a Fine before the Lord chiefe Juſtice.

IF you would acknowledge your Fine before the Lord cheife Iuſtice of the common Pleas, out of Court, firſt draw your *Precipe* and concord in a ſheet of paper, and then bring the parties that muſt acknowledge the fine to my Lords chamber, and deliver your *Precipe* to my Lords Clark of the Fines, who will read it to them in preſence of my Lord, and their hands being firſt ſet to it, he acknowledgeth it before my Lord and he putteth his hand to it.

The Fee of my Lord cheife Iuſtice is 9s—8d. which being paid by you or your Client to my Lords Clark, after the acknowledgment, the Clarke will afterwards ingroſſe the *Precipe* and concord in Parchment, and get my Lords hand to that which you muſt fetch from him, and give him his fee for the ingroſsing thereof, which is, that done, you muſt carry it to the Curſitor of the ſhire where the Land lies and leave it with him to make a VVrit of Covenant by, when the VVrit is made, before you paſſe it under ſeal, you carry it to the alienation office, where you are to pay a fine for licence or leave to alien, and there it is you muſt make your Compoſition, which is ſet by the Commiſsioners ſitting for that purpoſe, and that you may doe it with the leſſe charge to your Client, you muſt informe your ſelfe of the value of the

land by year, and in caſe there have been a former fine, if you have it not to know the terme when it was and in caſe you informe the value, there is one ſits purpoſely with the Commiſſioners to take it, who was formerly a Doctor, you muſt by Entreaty, perſwaſion, or otherwiſe draw the fine to be ſet at as low a rate as poſſibly you may.

The value being ſet down by one of the Commiſſioners, if it exceed forty ſhillings, (for elſe there is nothing to be paid) you muſt goe to the Receiver in the ſame office, and pay the fine ſo aſſeſſed which is the Kings ſilver, for the Kings licenſe, which licenſe the Clark of the Kings ſilver entereth, as is hereafter ſhewed, when the mony is paid, the Receiver will ſet his hand to the back of the VVrit, then give it to the Doctor to ſign, who hath four pence, as I take it, for his hand, then get the hands of the two Commiſſioners to the back of the VVrit, which done, you muſt carry it to the three Clarks ſitting to be indorſed and entred.

This being done you bring back your VVrit to the Curſitor aud he will get it ſealed, and then you pay him the Fee of two ſhillings and ſix pence, then having broke it open you are to return it as follows.

Towards the upper end of the VVrit thus, } Pledges of proſecuting *John Doe* *Richard Roe.*

Towards the middle of the VVrit thus, } *John Dem.* *Richard Fem.*

And at the lower end of the VVrit the Sheriffs Name.

This

This is now by a late erected Office done by an Officer who takes for the doing of it, and making an entry of it, 1s. 6d.

Note, you are to file a Warrant of Attorney with the Clark of the Warrants where your Writ of Covenant must be signed, which warrant is as follows (the Shire in the Margin) *G. W. puts in his place T. L. to prosecute a Writ of Covenant against T. H. of Lands and Tenements in A. and C.*

That done file your Writ of Covenant and your Concord which you had from the Lords Clark together, and carry them to the *Custos brevium* his Office in *Lincolns Inne*, to the Clarke who dealeth for that Shire, and leave them with him to enter in his Book and to indorse the Writ, when he hath done, fetch them from him, and pay him for the same, 3s. 8d.

Then take them and carry them to the Kings-silver Office to enter the Kings-silver, which is the Fine for the value which you paid to the Receiver in the Alienation Office.

The forme of his entry you may see in the Rolls the Kings-silver Office, amongst the Plea-Rolls of any Term in the Treasury at *Westminster*, his Fee is for entring of it, 6d. which when he hath done, you must fetch it away and deliver it to the Secondary in the Chirographers Office, who takes it forth in his Book, and hath for his Fee 5s. 8d. if it be in the Term, but if it be not in the Terme, then you must give him twelve pence more, which he will have for allowing the Proclamation in the same Terme: That done, you must in the same Office deliver it to the Clark of the Office, who is appointed to write for that Shire wherein the Land lyes to ingrosse, he hath for the ingrossing of it, 2 s. 6 d. if small, but if great 3 s. 6 d. or more in case it be exemplified.

When

When your Fines are Ingroſſed, which are by way of Indentures, get one part from him, and deliver it your Client to keep.

In making up your Clients Bill, you alwayes take for your owne Fee, as allowed for your paines, ſix ſhillings eight pence.

How to acknowledg a Fine before a Judg out of Court, by Dedimus poteſtatem.

YOU ſhall proceed in taking the acknowledgement; and in paſsing the Writ of Covenant thorow the Alienation Office, in like manner as is before ſhewed, which being done, and delivering your Writ back to the Curſitor, you muſt beſpeake a *Dedimus poteſtatem*, which the Curſitor muſt make, and when you have your Writ of Covenant and *Dedimus poteſtatem* under ſeale, you muſt deliver the *Dedimus* to the Iudges Clark of the Fines, and he will Ingroſs the *precipe* and *Concord* as before is ſhewed, and return the *Dedimus*, and get the Iudges hand to it; which *Dedimus* ſo returned, *Concord* and Writ of Covenant you muſt annex together, and paſſe them through the *Cuſtos Brevium*, Clark of the Warranty, Clark of the Kings ſilver, Mr. *Jones* his office of Inrolments, as its termed, and the Chirographers Office in like manner, as is before ſhewed: The courſe of Proceeding and Fees being all one more then this, that you pay to the Curſitor for your *Dedimus poteſtatem*, 9s 2d.

How to ſue forth a Fine to be acknowledged before Commiſſioners in the Countrey, by eſpeciall Dedimus Poteſtatem.

WHere in regard of the Cognizors debility of Body, or remoteneſs from *London* or *Weſtminſter*, or other occaſion, you are to ſue out a Fine, and paſſe it by ſpeciall *Dedimus*, inabling Commiſſioners in the Country to take the acknowledgment; you are to proceed as followes.

FIrſt draw your *Precipe* in a Sheet of Paper, as a Note for the Curſitor to draw the *Dedimus* by, then ingroſſe your *Precipe* and *Concord* in a faire peice of Parchment, and goe therewith to the Curſitor of the Shire, where your Land lies, and upon your *Precipe* in paper inſert your Commisſioners names, which muſt be four in number, whereof one at leaſt muſt be a Knight, and get him to make your *Dedimus poteſtatem*, for which you muſt pay him and in paying of him (for he takes for them all) you pay a Fine, and for a Iudges hand, and for the Maſter of the Rolls his hand, which hands muſt be had before it be ſealed, and then having it under Seale, deliver it ſo, and the Concord before any two of the Commisſioners named in the *Dedimus*, and your Cognizors being preſent, let them take the *Caption* as is before ſhewed: Which being done, they muſt return the Writ of *Of Dedimus*, and their Execution thereof in manner and form following on the back of the Writ.

The Execution of this Writ appears in a certain

Schedule

Schedule to the Writ annexed.

And they must write the day of the *Caption* of the Cognizance, underneath the Concord as followes: (taken and acknowledged at C. in the County of *D.* the twelfth day of *August* 1650.)

Underneath the which the Commissioners are to Subscribe their names.

Having your *Dedimus potestatem* thus returned, you must file your *Dedimus* and *Concord* together, and carry them to the Cursitor for the making of your Writ of Covenant, which having had and compounded, your proceed is as in all other Fines through the severall Offices.

NOte, that upon every Fine past, where a Fine is paid, there is within foure or five Termes a post-Fine, that comes in charge to the Sheriff to levy in the County where the Land lyeth; and that Fine is as much and halfe as much, as was payd before in the Alienation Office.

How to sue forth a license of Alienation of Lands holden in Capite.

IF you levy a Fine of Lands holden in *Capite* of the Kings, you must be driven to sue forth your license of Alienation, for if you should enter into the Land without a license, the King would have a Writ of intrusion against you and receive all the main profits, untill you have sued out a pardon, which is both troublesome and chargeable: The fine whereof besides the main Profits between the Intrusion and the Pardon, and the other charges, is above a years value cleerly, according to such composition

or

or *Affidavit* of the under value, as is ſaid, before the other Compoſitions of the Alienation Office, unleſſe the Commiſſioners inquire, and will more favourably compound for the meane Profits, as in ſome caſes upon reaſonable cauſe ſhewed, they uſe to doe.

And your licence of Alienation is to be ſued in this manner, firſt, you muſt get the Clark of the Alienations, to make you a *Docquet* in paper, which you muſt carry to the Alienation Office, and there compound for the value of the Land, which muſt be alſo by compoſition or *affidavit*, as is ſhewed before.

The value being ſet down underneath your *Docquet*, you muſt pay a third part of the value ſo aſſeſſed by way of Fine for your licenſe, which you muſt likewiſe pay there in the ſame Office, and you muſt give the Receiver over and above what you pay, ſix pence.

Then you muſt there get the Doctors hand to your *Docquet*, for which you muſt give him, 2 s. and you muſt then get the Commiſſioners in the ſame Office, to ſet their hands to the *Docquet*, then deliver it to the Regiſter, there to enter, for which you muſt give him 6 *d*. And after it is entred, then carry it to the Clark of the Alienation again, and hee will get the Lord Chancellor or Lord Keepers hand to it, and will afterwards ingroſſe your licenſe of Alienation, and paſſe it under the great Seale for you. The Charges are as followeth;

The Charge of acknowledging a Fine before the Lord chief Juſtice, and a Licenſe of Alienation upon the ſame.

	l	*s*	*d*
For drawing the Concord,	0-	3:	4
For my Lord chiefe Juſtices fee for acknowledgement.	0-	9	8
To his Clark for ingroſſing the Concord,	0-	1-	6

For

For the Writ of Covenant. 0-2-6
For the return 0-2-0
For the *post diem* thereof. 0-0-4
For the Fine, 0-0-0
To the Receiver for marking the Writ of Covenant 0-0-6
For the entry and endorsment 0-1-6
For the Doctors hand 0-0-4
For the Warrant of Attorney and filing it 0-0-8
To the *Custos brevium.* 0-3-8
To the Clark of the Kings Silver 0-1-4
To the Chirographer 0-6-8
For ingrossing the Fine 0-3-0
For the Attorneys Fee, 0-6-8

Charges of the fine acknowledged at Bar.

FOR drawing the *precipe* and Concord 3-4.
For the Writ of covenant 2-6
For return of the same 2-0
For the filing thereof 1o.
To the Sarjeant at Bar 3-4.
To the Prothonotary 6.
To the Secondary 6.
To the Crier, Tipstaves, and court-keeper 1-6.
For the Fine
To the Receiver 6.
For entry and endorsment 1-6.
For the Doctors hand 4.
For the Warrant of Attorney and filing of it 8.
To the *Custos brevium.* 3-8.
To the Clark of the Kings silver 1o.

To

To the Chirographer 6-8.
For ingrossing the indentures of the fine 3-0.
For the Fee. 6-8.

Charges of a Fine acknowledged by Dedimus potestatem, *before a Judge, and exemplified.*

FOR drawing the *precipe* and concord 3-4.
To the Judge for his fee, 9-8.
To the Clark for the return of the *Dedimus*, and ingrossing the Concord, 2-6.
For the Writ of *Dedimus potestatem*, 9-2.
For all other Fees, as in the next proceeding, for the severall Offices.
For the Exemplification, 2-8.
For the Exemplifying, 5-6.
For the Seale thereof. 2-2.

Charges of a Fine by speciall Dedimus potestatem *taken before Commissioners.*

FOR drawing the *Precipe* and Concord. 0-3-4
For the speciall *Dedimus potestatem*, 1-0-0
For the Returne, 0-3-0
For the rest of the Fees, they differ very little from what are paid upon Fines otherwise acknowledged

HAving spoken so largely of Fines, it now rests we should speak somewhat of Recoveries, that relate

relate thereunto, for in many cases where a Fine is had, if there be Remainders over, it is very necessary for the Purchasers security to have a recovery, to bar those in remainder.

We shall therefore begin to shew you how to sue forth a Recovery, the Tenant and Voucher comming in person into court.

When you would sue forth a Recovery to be suffered by the parties in open Court, you must doe thus:

Draw your *Precipe* for your Writ of entry, naming the Demandants and the Tenants, the quantity of Lands, and of what nature, how many Acres, what Mannors, Messuages, and in what place or places they lye or extend.

Then take your *Precipe* and enter it upon the Bill of Pleas or Remembrance of the *Prothonotary*, in whose Office you enter and put the Voucher or Vouchers names in the Margin of the Remembrance, if it be a single Voucher, then thus: the proper tenant calls *Howse* to warranty.

If a double Voucher, the proper Tenant calls *J.* L. Esq; who calls *J. Howse* (who is the common Voucher and the last Voucher in all Recoveries) if a treble Voucher, then you must name another person to be Vouched over.

Upon this remembrance you must enter after your *Precipe*, the Returne and *Teste* of your Writ of entry, and how it is returned, and the Sheriffs name, but this you make perfect before you examine your Recovery with the Prothonotary.

Those remembrances are alwayes brought to the Hall in the Term time at the first sitting of the court, so that when you would draw your Recovery at Bar, your fittest time will be in a morning when the Judges first sit down, before they enter upon businesse.

Having

Having your client in readineſſe at the Bar, the Tenants and Vouchers, and the Remembrance in your hand, call them up between the Serjeants, and then deliver the Remembrance, and ſhew him your *Precipe* into one of the Serjeants hands, who will aske which is the Tenant, and cauſe him to ſtand up, as alſo the Vouchers, to the intent that they may be ſhewed to the court, then the Iudges will aske, who knowes the parties, which you or ſome other muſt anſwer, you know them to be ſuch parties, or elſe might others come either in men or womens names and ſuffer a Recovery of their Lands, to the Loſſe of their Lands, as hath been heretofore ſeen; where the husband brought in another woman a ſtranger, ſaying, ſhe was his wife, and ſuffered a Recovery of his wives lands to cut off her eſtate without her conſent.

After the Tenant or Tenants with the Vouchers, have their appearance recorded, then muſt you give for every Serjeant that ſpeakes, (and one there is for each perſon perſonated, whether Demandant, Tenant, or Voucher or Vouchers) two ſhilling and ſix pence, which done, and the reſt of the fees paid in Court, which follow after amongſt others.

Then get the Curſitor to make your VVrit of Entry by the *Precipe*, and having your writ of Entry unſealed, you muſt proceed therewith in the Alienation Office and other Offices, in all things as was ſhewed in a VVrit of covenant, for the Fees and the Fine are all one, only you muſt have the Attorney Generalls hand to the Back of your VVrit of Entry, which you have not to the VVrit of covenant, for you which pay ten ſhillings, formerly but eight ſhillings, and is for that you ſhould enter into that, the land is not holden in *Capite*, but when they did enter bond, they did pay but ſix pence; and alſo where

the Land is holden, and you sue forth license of Alienation, you should pay nothing.

Then take your VVrit and get it sealed, and then open it and returne it, as you do your VVrit of Covenant.

Then deliver your VVrit to one of the Clarks of the Prothonotaries Office, who entreth for you, and he will enter and exemplifie your Recovery for you and make your writ of Seizin, and returne that, and examine the Recovery with the Remembrance, writs of Entry and Seizin, and the Roll your Recovery is entred on with the Prothonotary, who must sign your Exemplification, which being carefully examined and signed, you must get sealed, and then deliver it to your Clyent: And you must be very carefull to see both your writ of Entry and seizin filed with the *Custos brevium*, for that is the warranty for your Proceedings had.

Note, your writ of Seizin may be made returnable *Indilate*, or at a day certaine, or of the Term following, all which your owne further experience and practice will shew.

How to sue forth a Recovery by Dedimus Potestatem, *and Warrant of Attorney.*

IF either the Tenant or Vouchers cannot come into the Court in person, you must passe it by warrant of Attorney, which warrant of Attorney may be taken by any of the Judges of either Bench, Barons of the Exchequer, or Serjeants at law in their circuits without *Dedimus potestatem*, or by Commissioners in the Country,

Country, where you muſt proceed as in the Fine by *Dedimus poteſtatem.*

When you acknowledge your warrant before a Judge you muſt draw up your warrant as before in Parchment; and go with the Partyes before a Judge and acknowledge them, and he will under-write the Day of the Caption, and ſubſcribe his name, then get your Writ of Entry made and paſſed through the Alienation Office, which done, ſeal it, and deliver it to your Prothonotaries Clark, and he will enter it, and will award the Writ of Summons; which will come in nine Returns after the *Teſte* of the Writ of Entry incluſive, and he will make a Copy of the Declaration he entereth in Parchment, which together with the Writ of Summons, and the warrant of Attorney, he will examine with the Prothonotary by the Writ of Entry and the Roll.

Then will he returne a Writ of Entry, and give it you fixt together with the Writ of Summons, warrant of Attorney, and Copy of the Declaration.

The Writ of Entry you muſt file, the Writ of Summons you muſt Seale and keep them ſo fixt together ſafely till the Writ of Summons be returnable; at which time you muſt bring the ſame into Court, and deliver it to one of the Serjeants, who will call it at the Barr, as the manner is, and you muſt pay the Fees in Court, which done you muſt take it from the Serjeant and give it to the Prothonotary, who will marke it thus (*A Barram*) and give it you againe, which you muſt deliver to your Clark in the Prothonotaries Office, who will Exemplifie and make your Recovery perfect and fitted for the Seale.

NOte, that although the Tenant be by warrant of Attorney, if either the Recovery be a ſingle

Voucher, or the Vouchers come in perſon, it needeth no Summons, and ſo may be a perfect Recovery of one term.

Note alſo, where you will take your Warrant by *Dedimus poteſtatem* before ſpeciall Commiſſioners, you muſt carry a Note of your *precipe*, and of your Commiſſioners names to the Curſitor, and get him to make your *Dedimus*, and proceed in that as is ſhewed you in caſe of a Fine, as to the Caption: And when your Warrants are acknowledged, get them certified, and then by the helpe of your Prothonotaries Clark, you may ſoon proceed to perfect your Recovery, either to Summons or *Alias* Summons, or ſo as your cauſe ſhall require.

It behoveth the Attorney to be very carefull of the true returning and filing of his Writs, and the examining and filing of his VVarrants, and other proceedings, for fear of committing errour: And to that purpoſe by the Statute of 23. *Eliz.* it hath been uſed, eſpecially in weighty matters, to exemplifie the VVrits, Returns, and VVarrants of Attorney, for fear of being imbezeled, whereby the Recoveries might be overthrown.

If you are to ſearch for any Recovery of an old terme, you muſt ſearch in the Office of the Clark of the VVarrants of Attorney, where you ſhall ſooneſt find it of any place, by reaſon all the Prothonotaries bring in their Plea-Rolls, on which the recoveries are entred, to the Clark of the Warrants to take them out into a Book.

It hath been the conſtant practice formerly, in caſe the Land were holden in *Capite*, to ſue forth a licenſe of Alienation, as you doe in the caſe of a Fine, and that before your VVrit of entry, for elſe you may be inforced to ſue forth a pardon afterward, which was very great miſchiefe.

Charges

Charges of a Recovery with two Vouchers in Perſon at the Barr.

	s. d.
FOR drawing *Precipe*,	2 - 6
For taking it into the Remembrance,	1 - 0
For your VVrit of Entrie,	2 - 6
For the Fine of it.	
To the Receiver,	0 - 6
For the Doctors hand, entring, and endorſing,	1 - 4
For drawing it at Bar, and four Serjeants,	13 - 4
To the Criers,	1 - 0
To the Box,	1 - 0
To the VVarden of the Fleet,	0 - 6
For the common Vouchee,	0 - 4
For the Attorney Generals hand to the VVrit,	10 - 6
For making the Remembrance, when the Recovery is drawn at the Barr,	2 - 0
For the returne of the VVrit of Entry,	2 - 0
For the *Poſt diem* of the VVrit of Entry,	0 - 4
For return of the VVrit of Seiſin,	2 - 0
To the Prothonotary for the Entry of the Recovery,	14 - 6
To the Clark for exemplifying of it, and making the VVrit of Seiſin,	7 - 6
For ſealing the Exemplification, and VVrit of Seiſin,	2 - 9
For filing the writs of Entry and Seiſin,	2 - 0
For the Fee of Demandant, Tenant, and Vouchee in the Recovery,	10 - 0

Charges of a Recovery by Summons upon a Warrant of Attorney

	s. d
For drawing your Recovery, *Precipe*, and the Warrant of Attorney.	3-4
For entry of the Summons,	6-6
For making the Writ of Summons, and the Seale,	2-7
To the Clark from drawing the Summons, and the entry in Parckment,	2-6
For filing every Warrant of Attorney,	0-8
For return of the Writ of Summons,	2-0
For the filing of it.	1-0

Note, that every single Voucher hath three Serjeants, a double Voucher foure Serjeants, and a trebble Voucher hath five Serjeants, and so further.

The Prothonotarie hath, as you see before, for his entry for every Summons,	6-6
For every single Voucher,	10-6
For every double Voucher,	14-6
For a trebble Voucher,	18-6
For every *Dedimus* and *Mittimus*,	4-0

The Charges of a Recovery under the Great Seale of England.

	l. s. d
FOR the *Certiorare*,	0-13-4
For the allowance thereof.	1-0-0

To the Clarke for his paines, 0-06-8
For the Exemplification for every Skyn, 1-06-8
For the Seale, 1-00-6

Come we now to the Action called Ejectione Firmæ.

THis Action is the moſt generall Action now in uſe, for triall of a Title, and comes in place of many reall Actions, which were both very tedious, difficult and chargeable. This lies, where a man makes a Leaſe to another of Lands, Houſes, *&c.* And ſeales and delivers it upon the Premiſſes, and leaves the Leſſee in poſſeſſion, and afterwards the Leſſee is outed by the Entry of a Stranger; here in this caſe the Leſſee ſhall bring his *Ejectione Firmæ.*

And in bringing this Action, hee muſt have recourſe to his Leaſe, both for the thing demiſed, and the Term, and the Date of the Demiſe, and the place preciſely where the Land lyes, but thoſe onely ſtaré to be mentioned in the Court, but not in the Writ.

You muſt be ſure your Originall beare Teſte, after the entry of the Ejector. And after.

In this Action is recovered the Poſſeſſion of the Land or Houſe demiſed, and that by an Execution of *Habere facias Poſſeſſionem*, which is awarded upon the Judgement Roll, and alſo Damages.

The Proceſſe in it are Originall, *capias*, *alias* *&c.*

The Originall runs thus.

THE Keepers of the Liberty, *&c.* Greeting, *&c.* Wherefore by Force and Armes two Meſſuages,

one Garden, eight Acres of Land, two Acres of Meadow, and three Acres of Paſture, with the Appurtenances in *H.* which *R. C.* to the aforeſaid *T. P.* did demiſe for a Terme which is not yet paſt, did enter and him the ſaid *T. P.* from his Farm aforeſaid he did eject, and other harmes to him he did, to the great Damage of him the ſaid *T. P.* and againſt the publick peace, *&c.*

This is the form of your Originall, and muſt be made thus by the Curſitor of the Shire, where the Land lyeth.

Note, that although in your Leaſe you many times name ſeverall Cloſes, either of Land, Meadow or Paſture, by their particular names, yet in your VVrit you muſt name the quantity of Acres of each, and how many Houſes, Cottages, Mills, *&c.*

After your Originall is ſued out, and a *Nihil* returned thereupon, you proceed to take out a *Capias*, and ſo arreſt the Ejector, but if you cannot arreſt upon the *Capias*, you may, as in other Actions, proceed to the Outlawry.

But the party againſt whom you bring your Action, either appearing after Arreſt, or voluntarily, you muſt prepare your Declaration.

The Declaration goeth thus.

Bedford. ff.

R. G. lately of *H.* in the County aforeſaid Yeoman, was attached to anſwer T. P. of Plea, wherefore by force and Armes, two Meſſuages, one Garden, eight Acres of Land, Two Acres of Meadow, and three Acres of Paſture, with the Appurtenances in *H.* which R. G. to the aforeſaid T. P. did demiſe for a Terme which is not yet paſt, did enter, and him the ſaid T. P. from his Farm aforeſaid he did eject, and other harmes to him he did, to the great Damage of him the ſaid T. P. and againſt the publick peace, *&c.*

&c. And whereupon the ſaid T.P. by *F. N.* his Attorney complaines, that whereas the aforeſaid R. G. (ſuch a day, and yeare, and place, naming the date of the Demiſe) did demiſe to him the ſaid T. P. the Tenements aforeſaid with the Appurtenances, to have and to occupy to him and his Aſſignes, from (ſuch a day then laſt paſt) unto the end and Terme of three yeares then next following, and fully to be compleat and ended: by vertue of which Demiſe, the aforeſaid T. P. into the Tenements aforeſaid with the Appurtenances did enter, and was thereof poſſeſſed, and the ſaid T. P. ſo being thereof poſſeſſed, the aforeſaid R. G. afterwards, to wit (ſuch a day and yeare aforeſaid) by Force and Armes, *&c.* Into the Tenements aforeſaid with the Appurtenances, which the aforeſaid R. G. to him the ſaid T. P. in form aforeſaid did demiſe, for the Terme aforeſaid, which is not yet paſt, did enter, and him from his Farme aforeſaid did eject, and other harmes, *&c.* to the great Damage, *&c.* and againſt the publick Peace, *&c* Whereupon he ſaith, that he is damnified and hath Damage to the value of forty Pounds, and thereupon he brings his Suit, *&c*,

To this the moſt generall plea is, Not guilty, nor is there indeed any other Plea in uſe, ſometimes the Defendant confeſſeth the action, and here you ſee following a Plea if not guilty and a confeſſion both to one action.

And the aforeſaid R. by T. L. his Attorney, comes and defends the force and injury when, *&c.* And as to the whole Treſpaſſe and Ejectment aforeſaid, above ſuppoſed to be done, beſides the Treſpaſſe and Ejectment in three Acres of Land of the Tenements aforeſaid with the Appurtenances, he the ſaid R. ſayes, that he is no wiſe thereof guilty as the aforeſaid T. P. above againſt him declareth, and of this he puts himſelfe

ſelfe upon the Country, and the aforeſaid *T. P.* in like manner, and as to the treſpaſs and Ejectment aforſaid in the aforeſaid 3 acres of Land of the tenements aforeſaid with the appurtenances, above ſuppoſed to be made, he the ſaid attorney of the aforſaid R. ſays that he is not informed by the aforeſaid *R. G* his Client, of any anſwer for him the ſaid *R. G.* to the aforeſaid T. P. in the complaint aforeſaid to be given, and nothing other he thereupon ſayes by which the ſaid ſaid T. P. ſhould remaine againſt him the ſaid G. for which the ſaid T. P. his aforeſaid Terme of and in the aforeſaid three acres of Land with the appurtenances, and his damages by reaſon of the Treſpaſſe and Ejectment aforeſaid, in the ſame three acres of Land ought not to recover, but becauſe it is convenient and neceſſary, that there be one onely tax of the Damages for the whole treſpaſs and Ejectment aforeſaid, if it ſhall happen that upon the determining of the iſſue aforeſaid, Judgement ſhall bee rendred for the aforeſaid T. P. Therefore the Writ for giving of poſſeſſion in that behalfe is to ceaſe, and alſo of inquiring of damages by reaſon of the treſpaſſe and Ejectment aforeſaid, in the ſame three acres of Land with the appurtenances, untill the iſſue above-joyned bee determined, and as to the trying of that Iſſue, command is given to the Sherif, that he cauſe to come here twelve *&c.* By whom *&c.* and who neither *&c.* to recognize, *&c.* Becauſe as well *&c.*

Here you have an iſſue ioyned which if you intend to try, you muſt proceed as is directed you in other actions, and ſo conſequently for your judgement after verdict.

In this Action as I told you, there is a poſſeſſion, recovered as well as Damages, and for Execution in both which is for poſſeſſion, your *Habere facias poſſeſſionem*, which is made, you muſt uſually by the Clark of

of the Judgements after your Costs are taxed and the Judgement signed, and likewise a *Capias ad satisfaciendum* against the Body for the Damage, or a *Fieri facias* against the goods or Lands, which are also made by the Clark of the Judgments, and may likewise be made by any of the Prothonotaries Clarks.

Having your Writ of *Habere facias possessionem*, in case you cannot voluntary have quiet and peaceable possession, you must deliver your Writ to the under-Sheriff, who will put you into possession, and remove whomsoever are in.

The fees incident to this action follow in a Table amongst others.

REplevin and Avowry comes in the next place to bee handled as that which brings a title many times in question by reason of the Avowry, wherein we shall shew you the nature of the action, and in what cases it lies, and for what things, what is incident to it by way of proceeding.

And to give you the fuller knowledge of this Action, we will begin to treat briefly of Distresses in generall.

Distresse is a thing which is distrained in a house or upon any Land for Rent behind, or other duty or services, or for hurt done, although the property of the thing belongeth unto a stranger: But if they be Cattell that belong to a Stranger, it is requisite that they were leavant and couchant upon the same Ground; that is to say, that the Beasts have beene upon the Ground a certain space, and have well rested themselves there, or else they are not distrainable for rent or Service.

And if a man distrain for Rent, Services, or other thing, without a lawfull cause; then the party grieved shall have a Replevin, and upon security found,

to

to purſue his Action, ſhall have the Diſtreſſe delivered to him again: But there be divers things that be not diſtrainable, *Viz.* another mans Garment in the Houſe of a Taylor, a Strangers Cloath in the houſe of a Fuller, Shearman, or VVeaver, for that they be common Artificers, and that the common preſumption is, that ſuch things belong not to the Artificers in their own right, but to other perſons which put them there to be wrought: The leſſor cannot diſtrain fats fixt by his Leſſee for a dying Pan, although the Leſſee may remove them during his Terme.

The Leſſor cannot diſtrain Graſſe ſixt by the Leſſee, for his Rent.

The Lord cannot diſtrain Shocks of Corn for his Rent, but doing Damage he may, Sheaves of Corn in a Cart may be diſtrained, Victuall is not diſtrainable.

A Diſtreſſe ought allwayes to be made of ſuch things, whereof the Sheriff may make Replevin, and deliver again in as good caſe, as they were at the time of the taking.

A man may diſtrain for Homage of his Tenant, for Fealty and Eſcuage and other Services.

He may diſtrain alſo for Fines and Amerciaments, which be aſſeſſed in a Court-Leet, but not in a Court Baron.

He may likewiſe diſtrain for Damage Feſant; that is to ſay, when he findeth the Beaſts or Goods of any other, doing him wrong, by eating his Graſſe or Corn, or trampling them down, or for incombring his Ground.

Note, a man may not diſtrain for any Rent or thing due for any Land, but upon the ſame Land that is charged therewith.

But in caſe when a man comes to diſtrain, the other

ſeeing

seeing his purpose, chaseth his Beasts or Cattel away, or beareth his Goods out, to the intent they shall not be taken for a Distresse upon the Ground; in such case I may well pursue, and if I take it presently in the High-way or in another mans Ground, the taking is lawfull as well there as upon the Land charged, to whomsoever the property of the Goods be.

And for Fines and Amerciaments, which be assessed in a Leet, one may allwayes take the Goods of him that is so amerced, within whose Ground soever they be within the Iurisdiction of the Court.

VVhere one is amerced in a Leet, and another takes Leather from him, and makes thereof Bootes and shooes, whereby there seemes to be an altering of the property, in this case, those Bootes or shooes being within the Precinct of the Leet may be distrained for the amerciament.

Note, when one hath taken a Distresse, it behooveth to bring it to the common Pound, or else he may keep it in an open place, provided that he give notice to the party, who was owner of it, of his so taking of it, and the place where it is, that he, if the Distresse be a quick Beast, may give it food, and then if the beast or beasts, dye for default of food, he that was distrained, will receive the losse, for the party distraining, may take another Distresse for the same rent or duty.

But if he carry the Distresse to a Hold, or out of the County, so that the Sheriff may not make deliverance upon the Replevin, then the party upon the Sheriffs return of the Replevin may have a VVrit of *withernam* directed to the Sheriff, that he take as many of his beasts, or as much goods of the other in his keeping till he hath made deliverance of the first Distresse: And also if the Beasts or Goods be conveyed to a Fort or Castle, the Sheriff may take with

with him the *Posse Comitatus*, that is the power of the County, and beat downe the Castle, as appeares by the Statute of *Westminster* the first, Chapter the seventeenth.

There is Distresse finite and infinite.

Distresse finite, is limited by Law, how often it shall be made to bring the party to a tryall of the Action, as once or twice.

Distresse infinite, is within limitation untill the party come, as against a Jury that refuseth to appeare upon Certificate of Assize, the processe are a *Venire facias*, *Habeas Corpora*, and distresse infinite.

It is divided also into Grand Distresse, and an ordinary Distresse.

A Grand Distresse is that which is made of all the Goods and Chattels which the party hath within the County, and seemeth sometimes to be all one with Distresse infinite.

If a man proffer sufficient amends before the distresse made, for the wrong done by a mans Cattell, or otherwise, he cannot Distrain and Avow.

Note, that it is not lawfull for any common person to make Distresses out of their Fee, not in the Kings high way, nor in the common Street; but the King might, and so might any who are substituted as his Ministers, and have especiall Authority derived from him.

Thus much for Distresses in generall, we come now to the Replevying of the Distresse taken.

THis Replevin (as we touched before in Distres) is a Writ that lieth where any man distraineth another for Rent or other thing, then the party distrained

ſtrained ſhall have this writ to the Sheriff to deliver to him the Diſtreſſe, and ſhall find Surety (as we ſaid before) to purſue his Action, and if he purſue it not, or if it be found or adjudged againſt him, then he that took the Diſtreſſe ſhall have again the diſtreſſe, and, that is called the returne of the Beaſts, or other things, and he ſhall have in ſuch Caſes, a writ that is called a *Returno Habendo*.

Alſo if it be in any Franchiſe or Bailiwick, the party ſhall have a Replevin of the Sheriff, directed to the Bayliff of the ſame franchiſe, for to deliver them againe, and he ſhall find ſurety to purſue his action at the next County-Court, and this Replevin may be removed out of the country unto the common Pleas, by a Writ of *Recordare*.

Note, that a man may have a writ of *Homine replegeando*, which lies, where a man is in priſon, and not by the eſpeciall commandement of the King, nor of his Juſtices, nor for the death of a man, nor for the Kings Forreſt, nor for ſuch cauſe that is not repleviable; then he ſhall have this writ directed to the Sheriff, that he cauſe him to be replevied.

This writ is a Juſtices and not returneable, and if the Sherif do it not, then there ſhall go forth another Writ (*Sicut alias*) and afterwards another Writ, (*Sicut plures vel cauſam nobis ſignifices*) which ſhall be returneable, and if the Sheriff yet make no replevin, then there ſhall go forth an Attachment againſt the Sheriff, directed to the Coroners to attach the Sheriff, and to bring him before the Juſtices at a certain day, and furthermore that they make execution of the firſt writ.

If a man take living Cattell, and more then one Beaſt, then the Writ of Replevin runs thus.

The

The Writ of Replevin.

THe Keepers, *&c.* We command thee that justly and without delay, thou causest to be replevied, unto *B.* his Cattell, which *C.* took and unjustly detaines, as its said, and afterwards to him then thereupon, justly cause to be brought back, least that we any more thereupon, heare a complaint for want of Justice, *&c.*

If it be but one single Beast that is taken, then the VVrit shall be.

The Keepers, *&c.* VVe command thee, *&c.* that thou causest to be replevied unto *B.* his Horse, Heyfer, or Bull, *&c.*

If it be of any dead Chattell, the VVrit shall go thus,

The Keepers, *&c.* We command thee, *&c.* that thou causest to be replevied unto *B.* his Goods and Chattells.

In his Declaration it behoveth him, to declare of divers things, naming them.

But if he take but one thing that is a dead Chattell, then the VVrit shall be thus,

The Keepers, *&c.* VVe command thee, *&c.* that thou causest to be replevied unto *B.* a certain Net or a certain Iron of his Mill, *&c.*

NOte, that if the Sheriff return upon the Replevin, the *Alias* or *Plures* (where the Replevy is to be made within a Liberty or Franchise) that he hath commanded the Bailiff of the Franchise, who hath given him no answer, or that the Bayliff will not make deliverance, that then the Plaintiff shall have a *Non omittas* directed to the Sheriff, commanding him to enter into the Franchise, and make the Return, and if the Sheriff do it not, the Plaintiff shall

ſhall have an *Aliàs non omittas* directed unto the Sheriff, and afterwards a *Plures non omittas*, &c.

But this return, that he hath commanded the Bailiff of the liberty, *&c.* who gave me no anſwer, *&c.* or the other return, that that the Bayliff will make no deliverance, are no good returns, for by the ſtatute of *weſtminſter* 1 *Chapter* 26. in the end of the ſame ſtatute appears that the Sheriff upon ſuch a return made to him by the Bayliff ought preſently to enter into the franchiſe or liberty, and make deliverance of the thing taken.

And if the Sheriff upon the *Plures*, return, that the aforeſaid B. the cattell of the aforeſaid A. hath taken and them hath driven out of the County into the County of *F.* by which he cannot replevy them unto him, or if the Sherif returne that he hath commanded the Bayliff of the Franchiſe of *D.* who hath returne of Writs, *&c.* who hath anſwered him, that the Cattell are Eſloyned into divers liberties, that he cannot have the view of them, whereby to make deliverance.

And if the Sheriff himſelfe make return, that he cannot have view of the cattel wherby to make deliverance or if the Sherif returne, that after the taking of them, *&c.* the Defend. hath eſloyned his beaſts out of his Bailiwick, by which he cannot make deliverance, or if the Sheriff return, that the Defendant hath eſloyned his beaſts into places unknown, by which he cannot come to have a view of the Beaſts, whereby to make deliverance, or if the Sheriff return that he hath commanded the Baylff of the Franchiſe, *&c.* Who hath anſwered him, that the Defendant hath impounded the beaſts within the Rectory of the Church of *C.* by which he cannot make deliverance; upon thoſe returns made by the Sheriff, the Plaintiff may have a Writ of *Withernam* to take as many of the

beasts of the Defendant, and it shall be directed to the Sheriff, and the Writ shall be thus;

The Writ of Withernam.

THE Keepers, *&c.* Whereas we have many times commanded thee justly, *&c.* To *A.* his Cattell which *B.* took, *&c.* and detaineth, as its said, thou shouldest replevy or signifie the cause to us, wherfore our commandement to thee many times therupon directed, thou couldest not, nor wouldest not execute: And thou hast signified unto us, that after the aforesaid *B.* took the Cattell of the aforesaid *A.* he drove them in your Country, and from that County into the County of *C.* by which you could not replevy them to him the said *A.* we willing to stop the malice of him the said *B.* in that behalfe, command thee, that the Cattell of the aforesaid *B.* within thy Bayliwick, thou take without delay in *Withernam*, and them thou detain untill, according to the custome of our Realm of *England*, thou canst replevy the aforesaid A. his Cattell, according to the Tenor of our aforesaid Command to thee formerly directed, *&c.*

Note, in this Writ of *withernam*, that whatsoever the Sheriff return upon the *Plures*, it ought to be inserted and rehearsed in the Writ of *Withernam*, as is before specified, and if the Sheriff returne upon the *Plures*, that he hath commanded the Bayliff of the Franchise, *&c.* who answereth him, that the Cattell are essoyned, *&c.* then the Plaintiff shall have a Writ of *withernam*, directed to the Sheriff, and the Sheriff shall command the Bayliff of the Franchise to serve the *withernam*, and if the Bayliff do not Execution, or give not any answer to the Sheriff of the precept directed to him, then the Plaintiff shall have a *Withernam* directed to the Sheriff, with a (*non omittas propter aliquam libertatem*, &c. *Quin eam ingrediaris*, &c.

&c.) and ſhall take in *Withernam* &c.

Note, that the Sheriff upon complaint made unto him of the taking of Cattell, may command his Bailif by word of mouth to make Replevin, and this as well as if the Sheriff had made a precept to his Bayliff to make a Replevin, for it may ſo fall out the Sheriff nor his Bayliff may not be able to write, or may want Pen, Inke, or paper.

If a man take Cattell Damage Feaſant, that is doing hurt, and offer ſufficient amends before the Cattell be impounded, and the party refuſeth it, &c. Now if he ſue Replevin for the Cattell, he ſhall recover damages onely for the detaining of them; but not for the taking of them, for that was warrantable.

And if the Lord take the Beaſts of his Tenant wrongfully, and after the beaſts return unto the Tenant, yet the Tenant ſhall have a Replevin againſt the Lord for thoſe beaſts, and ſhall recover his damages for the wrongfull taking of them.

And if a man diſtrain in one County, and drive the cattell into another County, the party whoſe Cattell they were may ſue a Replevin in either of the Counties, which he pleaſe, or in both.

And if the Cattell of a feme ſole, that is, a woman unmarried, be taken, and afterwards ſhe take a Husband, the Husband ſoley may ſue a Replevin.

Note, in Replevin, if the Plaintiff declare that the Defendant now hath and detaineth the Cattell, &c. and the Defendant appeares, and after makes default, the Plaintiff ſhall have judgment to recover all in damages, as well the value of the Cattell, as damage for the taking of them, and his coſts.

IN this action of Replevin the proceſſe are Summons, Attachment, and Diſtreſſe, upon a *Ni-*

bil, proceſſe of Outlawry, and then the Originall muſt come forth of the Chancery, except the Sheriff who may make a replevin, *Ex Officio*, (which ſhall be tried in the Sheriffs court, called the County-court) do make it, which is moſt uſuall, and then it may be removed forth of the Sheriffs Court, by a (*Recordare*) or forth of any Lords Court or Hundred Court by an (*Accedas ad curiam*) upon either of which writs returnable, either into the upper Bench or common Bench, if the Plaintiff declare not againſt the avowant for taking his Goods or Chattells which were taken before, the Avowant is to ſue out a Writ of *Returno Habendo* to be made by the Phillizer of the County, upon the return of which Writ, if the Plaintiff, that is, he whoſe Cattell were taken declare not, there ſhall be a Writ to inquire of Damages, *&c.*

And if the Sheriff upon the *Returno Habendo*, do return that the Cattell were Eſloyned, &c. then a *Capias* in *Withernam* as was beforeſaid, ſhall be awarded to take other Cattell; and if the Sheriff returne that he hath no Cattell, then a *Capias* againſt the Body, and thoſe Proceſſe are likewiſe made by the Phillizer of the County, *&c.* And the like Proceſſe may be had in a Court Baron, in Replevin there.

Having ſhewed you the nature of this action, and how and in what caſes it lyes, and the Proceſſes that are incident to it: We come now to the Declaration upon it.

Devon. ſſ.

IN. was ſummoned to anſwer W. D. of a Plea, wherefore he tooke the Cattell of him the ſaid W. and them unjuſtly detained againſt ſureties and Pledges, *&c.* and whereupon the ſame W. by I. D. his Attorney complaines, that the aforeſaid I. N.

(ſuch

(ſuch a day and yeare) at R. in a certaine place there called E. he took the Cattell, that is to ſay, five Heyfers and two Bullocks of him the ſaid W. and them unjuſtly detained, againſt Sureties and Pledges, untill, &c. Whereupon he ſaith, that he is damnified and hath Damage to the value of twenty Pounds, and thereupon he brings his ſuit, &c.

The Avoury or damage feaſant.

AND the aforeſaid I. by R. F. his Attorney, comes and defends the Force and injury when &c. And as the Bailiff of I. E. well acknowledgeth the taking of the ſaid Cattell, in the aforeſaid place in which, &c. and juſtly, &c. becauſe he ſaith, that the ſame place in which the taking of the Cattell aforeſaid was ſuppoſed to be done, containeth, and, the aforeſaid time of the taking aforeſaid above ſupoſed to be done, did containe in it ſixteene Acres of Land with the Appurtenances, in R. aforeſaid, which ſaid ſixteen Acres of Land with the Appurtenances are, and the aforeſaid time of taking aforeſaid above ſuppoſed to be done, were the ſole and free Tenement of the ſaid I. E. And becauſe the Cattell aforeſaid, the aforeſaid time wherein, &c. were in the aforeſaid place in which &c. feeding upon the Graſſe growing therein, and doing Damage there, the ſame I. as the Bayliff of the aforeſaid I. E, well acknowledgeth the taking of the aforeſaid Cattell, in the aforeſaid place in which, &c. and juſtly &c. doing there Damage, &c.

A Plea in Barre to the Aveury, by a Guardian in Socage.

AND the aforesaid W. saith that the aforesaid I for the reason before alledged, ought not to acknowledge the taking of the aforesaid Cattell, in the aforesaid place in which, &c. as the Bayliff of the aforesaid I. E. to be just, because he saith, that before the aforesaid time of the taking aforesaid, and long before the aforesaid I. E. had any thing in the aforesaid sixteen acres of Land with the appurtenances, one R. E. was seized of the Mannor of H. with the Appurtenances, in the County aforesaid whereof the aforesaid Place in which, &c. is, and the aforesaid time of taking aforesaid, was parcell in his Demesne as of Fee, and being so thereof seized, the Mannor with the Appurtenances whereof, &c. hee held of one R. W. Knight, as of his Mannor of L. in the County aforesaid, in Socage, that is to say, by Fealty and the Rent of twenty pound by yeare, every yeare, at the Feast of Saint *Michael* the Arch-Angell yearely to be paid, as also by the service of doing suite to the Court of the said R. of his aforesaid Mannor of L. from three weekes to three weekes, at the aforesaid Mannor yearly to be held; and the same R. E. of the Mannor of H. aforesaid, with the Appurtenances whereof, &c. being so seized, dyed thereof seized, after whose Death the said Mannor with the Appurtenances whereof, &c. descended to the aforesaid I. E as to the Daughter and Heire of him the said R. E. the same I. E. being then within the age of fourteen yeares, that is to say, at the age of twelve yeares, and the said W. is the next of Kindred to the said I. E. that is to say, the Brother of *Eliaor*, the wife of the aforesaid R. E. and Mother

of

of the aforesaid *J. E.* to whom the aforesaid Mannor of *H.* with the Appurtenances whereof, *&c.* cannot from the aforesaid *I. E.* by hereditary Right descend, by which the custody of the aforesaid Mannor of *H.* with the Appurtenances whereof, *&c.* and of the aforesaid *I. E.* untill the lawfull age of fourteen years, of her the said *I. E.* pertaines, by which the said *W.* the aforesaid time of taking aforesaid, was of the Custody of the said Mannor of *H.* with the Appurtenances whereof, *&c.* and of the aforesaid *I. E.* possessed, for that at the same time in which, *&c.* the said *I. E.* was within the age of fourteen years. And being so thereof possessed, afterwards, and before the aforesaid time of taking aforesaid, he put his aforesaid Cattell, on the aforesaid place in which, *&c.* to feed on the grass them thereupon growing: Which said Cattell were in the aforesaid place in which, *&c.* feeding upon the grass then growing, untill the aforesaid *I.* the day and yeare in the Declaration above specified, at *K.* aforesaid, took the aforesaid Cattell of him the said *W.* and them unjustly detained, against Sureties and Pledges, untill, *&c.* as the said *W.* against him complaines; and this is he is ready to aver, whereupon for that the aforesaid *I.* above acknowledgeth the taking of the aforesaid Cattell, in the aforesaid place in which *&c.* the said *W.* prayes Judgement and his Damages, by reason of the taking and unjust detainiug of the aforesaid Cattell, to bee adjudged unto him, *&c.*

The defendant maintaines his Plea, and traverses the Tenure in Socage.

AND the aforesaid I. N. as formerly saith, that the aforesaid sixteen acres of Land with the Appurtenances, are, and at the aforesaid time of taking

aforesaid, above supposed to be done, where the sole and free Tenement of the aforesaid I. E. as he before hath alledged, without that, that the aforesaid R. E. held the aforesaid Mannor of H. with the Appurtenances whereof, &c. of the aforesaid R. W. Knight, as of his Mannor of L. in Socage; that is to say, by fealty and the Rent of twenty pence by the yeare, every yeare, at the Feast of S. *Michael* the Arch-Angell yearly to be paid, and by the service of doing suite at the Court of the aforesaid R. W. of his aforesaid Mannor of L. from three weeks to three weeks, at the Mannor aforesaid yearly to be held, as the aforesaid W. hath above alledged, and this he is ready to aver, whereupon he praies Judgement, and the return of his Cattell, together with his Damages to him the said I. N. to be adjudged, &c.

Issue upon the Traverse.

ANE the aforesaid W. as formerly saith, that the aforesaid R. E. held the aforesaid Mannor of H. with the appurtenances, whereof, &c. of the aforesaid R. W. as of his Mannor of L. in socage, that is to say, by fealty, and the rent of twenty pence by yeare, each yeare at the Feast of S. *Michael* the Arch-Angell, yearly to be paid, as also by the service of doing suit at the Court of the aforesaid R. W. of his aforesaid Mannor of L. from three weeks to three weeks; at the said manner yearly to be held, as he hath before alledged, and this he prayes may bee inquired of by the Country, and the aforesaid I. N. in like manner, therefore command is given to the Sheriff that he cause to come here twelve, &c. By whom &c. And who neither, &c. To recognize, &c. Because as well, &c.

Here you have both a declaration, an Avowry, a bar

barro the avowry, a Rejoynder, and a Sur-rejoynder, whereby you have a full and a compleat Iſſue made up.

And here note, that this avowry is for damage feaſant, but there are ſeverall other avowries, as,

Firſt, A man may avow for ſervices due to his Mannor, as Suit to his Court, or Suit at the Mill, *&c.*

Or for a Rent Charge, upon Preſcription to diſtrain.

Or for a Rent Charge generally, hee may avow.

A Man may avow for an amerciament in a Court Baron.

After iſſue joyned, in caſe you would proceed to a Triall, your proceeds are for the making your *Venire*, and ſuing out your Record, and *Habeas Corpus*, as in other actions.

Partition.

THis Action lyes in ſeverall caſes, as where Lands deſcend by the courſe of the Common-Law, or by Cuſtome, as *Gavelkinde* Land amongſt Coheires or Copartners, where there muſt be two at the leaſt, whether they be Sons, Daughters, Siſters, Aunts, or otherwiſe of Kin to the Anceſtor from whom the Land deſcended to them.

And this Partition is made four wayes for the moſt part, whereof three are at pleaſure, and by agreement amongſt themſelves, the other is by compulſion, when any refuſe.

One partition is, where they themſelves divide the Land equally by agreement into ſo many parts as there be of them Copartners, and each chooſeth

one

one ſhare or part, the eldeſt firſt, and ſo the one after the other, as they be of age, except the eldeſt by conſent made the partition, then the choice belongeth to the next, and ſo to the eleſt laſt, according to the old Rule, he that divides, muſt not chooſe.

Another partition is, when they chooſe certaine of their friends to make diviſion for them.

The third partition by agreement, is by drawing of Lots thus, 1. to divide the land into ſo many parts as there be Copartners, then to write every part ſeverally in a little Scrowle or piece of Paper, or Parchment, and put the ſame Scrowles up cloſe into a Hat or Cap, or other ſuch like thing, and then, each Partner, one after the other as they be of age to draw out thereof one peice or Scroule, whereon is written a part of the Land which by this drawing, is now ſeverally allotted unto them in Fee ſimple.

The fourth partition, which as we ſaid, is by compulſion, comes now to be treated of, which is, where one or ſome of the Copartners would have partition, and other ſome will not agree therto, then they that ſo would have Partion, may bring a Writ, *De partitione facienda*, againſt the others that would not make partition, by vertue whereof they ſhall be compelled to part, &c.

In Kent where the Lands are of the nature of Gavelkind, they call at this day their partition, Shifting, which is the ſame with that the Saxons uſed, namely, *Shaftan*, which ſignifies to make betweene Coheires partition, and to aſſigne to each of them their portion, in Latine it is called *Herciſcere*.

Partition may alſo be made by joynt Tenants, or Tenants in common by their aſſent by deed between them, or by writ, by the Statute of 32 *Henry the eight*, *chapter* 32. and by the Statute of 33. *Henry the eighth*.

The

The proceſſe in this action is Summons, Attachment, and Diſtreſſe infinite.

Your Summons is as follows;

The Summons in partition.

THe Keepers, *&c.* If *A. &c.* then ſummon *B.* to ſhew whereſore when they the ſaid *A.* and *B.* together and undivided, hold three acres of Land with the appurtenances of the inheritance which was *M.* Mother of the aforeſaid *A.* and *B.* whoſe heires they are in I. the ſame B. to make partition therof between them, according to the Law and Cuſtome of the Common-wealth of *England*, denieth, and the ſame permitteth not to be done, moſt unjuſtly as ſhe ſaith, and have you there this Writ, *&c.*

NOte that the Summons varies in the caſe where there are three or four Copartners, and likewiſe where it is between Joynt-Tenants, or Tenants in Comomn, the Summons according to the ſeverall caſes were too large here to inſert.

Having your Summons thus made returnable of any Terme, the Defendant may Eſſoyne if hee will.

If the Defendant doe Eſſoine, it reſts on the Plaintiffs part to adjourn it, as if the Summons, *Tres Michaelis*, he may adjourn to *Craſtino Martini*, and then iſſues out from the Phillizor, a Writ called a *Pone*, returnable, *Octabis Hillarii* and then upon that returned by the Sheriff, you muſt file your *Pone* with the Phillizor, which Warrants the making out of a *Diſtringas*, returnable, *Octabis Purificationis*, and upon that get an Amerciament of five pounds, if the Defendant appeare not, then you may have an *Alias Diſtringas* returnable in *Eaſter* Terme, doubling your Iſſues,

Iſſues, and ſo Diſtreſſe infinite till he do appeare.

Where the Defendant as before doth caſt an Eſſoyn, and there is no adjournment made thereof, the Defendant may enter a *Non-ſuite* againſt the Plaintiff, it he be carefull firſt to enter a *Ne recipiatur* with the Clark of the Eſſoynes, upon the day of the Exceptions, upon which non-ſuite, the Plaintiff muſt begin againe.

Where there are ſeverall Defendants, they may ſeveally Eſſoyn, if they would protract time before appearance, and where they Eſſoyn not upon the Summons, they may upon the *Pone*.

If they do not Eſſoyn but appear, you may declare, and your declaration;

Buck. ſſ.

Antony Cooke Knight, in mercy for many defaults: And the ſame *Anthony* and *Thomas Wooton Eſq.* were ſummoned to anſwer *Peter Temple* Gentleman, of a Plea; that whereas they the ſaid *Peter* and the aforeſaid *Anthony*, and *Thomas* together and undivided, do hold to them and their Heires, the Mannor of *Doſſet alias Dorſſet*, with the appurtenances, they the ſaid *Anthony* and *Thomas* to make partition, thereof between them, according to the forme of the ſtatute in that caſe publiſhed and provided, doe deny, and the ſame moſt unjuſtly permit not to be done, againſt the forme of the ſtatute aforeſaid, &c. And whereupon the ſaid *Peter* by T. *L.* his Attorney ſaies, that whereas he and the aforeſaid A. and T. together and undivided, do hold to them and their Heires, the Mannor aforeſaid with the Appurtenances, whereof unto him the ſaid *Peter* and his Heires it belongs, to have one part of the Maunor aforeſaid with the Appurtenances, in three parts equally to be divided, and to the aforeſaid *Anthony* and his Heires,

it

it pertaines to have another part of the ſame Manor with the Appurtenances, in three equall parts, as is aforeſaid to be divided, and unto the aforeſaid *Thomas* and his Heires it pertaines to have a third part, the reſidue thereof to hold to them in ſeveralty, ſo that the ſame *Peter* of his part of the Mannor aforeſaid with the Apurtenances to him belonging, and the aforeſaid *Anthony* of his part of the Mannor aforeſaid, with the Appurtenances to him thereof belonging, and the aforeſaid *Thomas* of his part of the Mannor aforeſaid with the Appurtenances, to him thereof belonging; may be able ſeverally to appart, they the ſaid *Anthony* and *Thomas* to make partition thereof between them, according to the forme of the Statute in that caſe made and provided, do deny, and the ſame moſt unjuſtly permit not to be done, againſt the form of the Statute aforeſaid; whereupon he ſaith that he is damnified, and hath Damage to the value of a hundred pounds, and thereupon he brings his Suite, *&c.*

In theſe Actions the Pleas are various, as the Title may be.

The Defendant may plead the freehold ſolely in himſelfe at the time of the Plaintiffs iſſuing forth his originall Writ, and traverſe that they hold it together and undivided, *&c.* whereupon he praies Judgement, whether Partition ought to be made between them, *&c.*

To this Plea the Plaintiff may take iſſue upon the Traverſe, and if ſo, they may joyne iſſue, and ſo proceed to tryall.

Upon a verdict and judgement had for the Plaintif, he may have his Writ of partition directed to the Sheriff, commanding him to take twelve men of the County, and of the *Venue*, in the preſence of the Copartners to make partition, by vertue of which Writ

he

he Summons a Jury of the ſaid twelve men, and in the preſence of the parties concerned, he makes partition, and then his return is as follows;

By vertue of this Writ of the Keepers of the liberty of *England* to me directed, and to this partition indented annexed J.T.D. Knight Sheriff of the county aforeſaid (ſuch a day, year, and place) having taken with me *L. N. R. R.* and twelve free and legall men of my County, and of the *Venue* within written, in preſence of *H. L. R. M.* in the Writ aforeſaid named, in my proper perſon, I came to the Tenements in the ſaid VVrit named, and there by their oath (having reſpect to the true value of the ſame Tenements with the appurtenances,) the ſame Tenements into partition into three parts equally to be parted, I have cauſed, and one part of the ſame three parts (*Videlicet*, ſuch and ſuch Land ſo butted and bounded) I the Sheriff aforeſaid, the aforeſaid day and yeare, *&c.* Thoſe to be delivered and aſſigned, have cauſed to *H. L.* in the ſaid Writ named to be had to her, in ſeveralty, according to the forme and effect of the Writ aforeſaid, and as to two parts of the reſidue of the aforeſaid Tenements in the aforeſaid writ ſpecified, I the Sheriff aforeſaid, certifie the Juſtices within written, that none of the part of the other 2 came to receive of me, the aforeſaid Sheriff, the ſame 2 parts, ſo that the ſame 2 parts to the other two aſſign, and, deliver I could not, as the writ aforeſaid exacteth and requireth, in Teſtimony whereof, as well the Seal of me the aforeſaid Sheriff, as the ſeals of the aforeſaid twelve Jurors to this Partition indented, or ſet, given the day and yeare aboveſaid: Upon this Return of the Sheriff, the Judgment is entred, that the Partition aforeſaid made, in form aforeſaid ſhall be held firme and ſtable for ever, *&c.*

A partition thus made by the Sheriff, and by the Oath

Oath of twelve men, and Judgement thereupon given, ſhall bind an Infant, though his part be unequall.

Note, a partition between Joynt-Tenants, is not good without deed, albeit it be of Lands, and that they be compellable to make partition, by the Statute of 32. *Henry* the eighth, Chapter the tenth, and 32. *Hen.* the eighth, Chapter 32. becauſe they muſt purſue that Act by Writ, *De partitione faciend.*

And note, that you are to take out this Writ *De partitione faciend.* Executed by the Sheriff, together with the Sheriffs return *Verbatim*, into the remembrance in the Prothonotaries Office, and then the Prothonotary ſignes Judgment thereupon.

The Fees incident to this Action you will find in the generall Table of Fees.

We preceed now to treat of Dower.

DOwer in the Common Law is taken for that portion, *&c.* which the Widow hath for Terme of her life, of the Lands or Tenements of her Husbands, it is called *Dower or dowery*, as a gift, becauſe the Law it ſelfe doth (without any gift of the Husband himſelfe) give it to her, its commonly taken for the third part, which ſhe hath of her Husbands Lands after his deceaſe.

To the conſummation of this *Dower*, three things are neceſſary, Marriage, Seizin, and the death of the Husband. 3

This proviſion the Law hath made for a Widow, where the Husband hath not aſſigned in his life-time part of his Lands to his wife.

Dower by the cuſtome of ſome places, as (*Gavelkind*,

kinde Land, *&c.* is to have halfe the Husbands Lands.

This Writ of Dower, lyes where a man is sole seized of Lands or Tenements in Fee-simple or Fee-taile, during the Coverture between him and his Wife, where by possibility the Issue between them may Inherit, if such a man dye, his Wife shall recover the third part of all the Lands, whereof the Husband was sole seized, any time during the Coverture, by a VVrit of Dower, though he dyed not seized, and although that he made Alienation thereof in his life time.

VVhere the Husband dyed seized, and the VVife brings a VVrit of Dower, and recovers, she shall recover Damages, for the Profits of the Land incurred, from the time of the Death of her Husband, but if there were any Estate or Alienation made of the Lands, *&c.* during coverture, so that the Husband dyed not seized, in that case she shall recover no Damages for mean profits, although she recover the Land.

It is not necessary that seizin should continue during Coverture, for being once seized it sufficeth, although he alien Lands or Extinguish Rents; yet the woman shall be Endowed.

But it is absolutely necessary that the Marriage continue, for if that be dissolved, the Dower ceaseth.

In case of *Elopement*, which is where a VVoman leaves her Husband, and goes away with an Adulterer, and dwelleth with the Adulterer, without voluntary reconcilement to her Husband, by this she shall lose her Dower.

A woman

A VVoman ſhall not be endowed of a Common without number in groſſe, nor of an annuity, *&c.* nor of Rents, *&c.* if the Freehold of the Rents were ſuſpended before the Coverture; but ſhe ſhall be endowed of Tithes, of the third part of the profits of Courts, Fines, Herriots, *&c.*

Shee ſhall be endowed according to the value of the Land at the time of the aſſignment, and not according to the value as it was in the time of her Husband, whether the value of the Land by building or otherwiſe be improved, or whether it be impaired by the Heir.

If the VVife be paſt the age of nine years at the time of the death of her Husband (albeit ſhee were but four years old when ſhe was married) yet ſhee ſhall be endowed.

If a VVoman marry before ſhee be of years to conſent, which is twelve in a VVoman, and fourteen in a Man, yet that imperfect or incheat Marriage (from which either of the parties at the age of conſent may diſagree,) after the Death of the Husband, ſhall give Dower to the VVife.

If the Heire, *&c.* put her out within forty dayes ſhe ſhall have a Writ *De quærentina habenda*, which is a Writ that the Law gives, where a man dies ſeized of a Mannor, Place, and other Lands, whereof the Wife ought to be indowed, there the Woman may abide in the Mannor, Place, and there live of the ſtore and profits thereof for the ſpace of forty dayes, within which time, her dower is to be aſſigned, as by *Magna Charta*, Chapter 6.

There needeth neither liberty of ſeiſin nor writing to any aſſignment of Dower, becauſe it is due of Common right, and the aſſignment muſt be of ſome part of the Land or of a Rent, *&c.* iſſuing out of the ſame.

The assignment must be certain and absolute, and by such as have freehold, or against whom a Writ of dower lies.

Assignment of Dower must be either by the Sheriff by the Kings Writ, or else by the Heir or other Tenant of the Land by consent and agreement betweene them.

A Joynture was formerly no bar of Dower at the Common Law, but now it is by the Statute of 27. *Henry the eighth*, if the Joynture be made to the Wife, according to the Purview of that Statute.

Six things are required to a perfect joynture.

First, it is to take effect for her life in possession, or profit, presently after the Decease of her Husband.

Secondly, that it be for terme of her owne life, or greater Estate.

Thirdly, it must be made to her selfe, and no other for her.

Fourthly, it must be made in satisfaction of her whole dower, and not of part, *&c.*

Fiftly, it must be either expressed or averred to be in satisfaction, *&c.*

Sixthly, it may be made either before or after marriage.

If the Joynture be made for Marriage, the Wife cannot wave it and claim her Dower at the common Law; but if it be made after Marriage, she may wave the same.

A Joynture made to the Wife above or under the age of nine years is good.

The Wife shall not be endowed of Lands which the Husband holdeth joyntly with another at the time of

of his Death, &c. for that the Joynt-Tenant which ſurviveth, claimeth the Land by the Feoffments, and by the Survivorſhip, which is above the title of Dower; but the Tenants in common hath ſeverall Freeholds and inheritances, and their moities ſhall deſcend to their ſeverall Heires, and therefore their wives ſhall thereof be indowed.

THe proceſſe incident to this Action of Dower are,

Firſt. A Summons between the *Teſte*, and return, whereof there is five returnes.

And if the Tenant neither appeare, nor caſt an Eſſoyne, entring a *Nerecipiatur*, a grand *Cape* lies to ſeize the Lands, &c. for that for ſuch his default, the Tenant ſhall loſe his Land.

But if he wage his Law of *Non Summons*, he ſhall ſave his default, and then he may plead with the Demandant.

NOte, that in the Grand *Cape*, the Tenant ſhall be ſummoned to anſwer to the Default, and further to the demandant; but in *Petite Cape*, he ſhall be ſummoned to anſwer to the default onely, and not to the Demandant, and it is called a *Petite Cape*, becauſe it includes leſſe then the other.

And if the Tenant by the returne of the Summons, eſſoyne, the Demandant adjournes fifteen dayes longer, in ſuch caſe, the Attorney for the Tenant, may enter with the Philizer, that the Tenant appeares and prayes view, &c.

Then a writ of view goes out, whereby the Sheriff is to ſhew the Tenant the lands in queſtion, which ſuppoſeth the tenant knows not well what lands it is that the Demandant asketh, by the returne of which writ

of View, the Tenants Attorney takes a Declaration.

NOte, that where a default is made after appearance, there a *Petite Cape* is to iſſue forth at the Demandant his ſuit, which is made, as likewiſe the Grand *Cape* by the Philizer of the County where the Land lieth.

The forme of the Summons is thus;

THe Keepers of the liberty, *&c.* to the Sheriff of *L.* greeting, command *J. D.* that Juſtly, *&c.* he render *E. D.* the third part of ten Meſſuages, five Cottages, two hundred Acres of Land, three hundred acres of Meadow, and two hundred acres of paſture, in *C.* and *B.* as her Dowry, by the Endowment of *G. D.* in time paſt her Husband, *&c.* whereof ſhe hath nothing, *&c.*

In eaſe the Tenant appear upon the Summons, *&c.* Then you delare as follows;

Lincolneſs.

E. D. Widow, which was the Wife of *G. D.* by *A. B.* their Attorney, demand againſt I. D. the third part of ten Meſſuages, five Cottages, and two hundred acres of Land, three hundred acres of Meadow, and two hundred acres of Paſture with the Appurtenances in *C.* and *B. &c.* as the Dowry of her the ſaid E. D. by the Endowment of G. D. in time paſt her Husband, *&c.*

To this action there may be ſeverall Pleas, as the caſe may require.

The moſt generall Plea is, (*Ne unque ſeizi que dower*) That is to ſay, that the Husband was never ſeized of any Eſtate, whereof the Wife can be endowed, the form whereof is as follows,

Ne unque seizi que Dower, pleaded in Dower.

AND the aforesaid Defendant by *A. B.* his Attorney comes and sayes, that the aforesaid *A.* ought not to have her Dowry of the Messuage and Tenements aforesaid, with the Appurtenances whereof, *&c.* Of the Indowment of the aforesaid *D.* once her Husband, *&c.* Because he saith that the aforesaid *D.* once her Husband, *&c.* neither at the day wherein he married the aforesaid *A.* nor at any time after, was seized of the same Messuage and Tenements, with the Appurtenances whereof, *&c.* of such an Estate, so that the aforesaid A. thereof might be indowed.

And of this he puts himselfe upon the Country, and the Plaintiff in like manner, therefore command is given to the Sheriff, that he cause to come here twelve, *&c.*

There is a Plea likewise of *Non-tenure*, which is as followes;

Non-tenure pleaded in bar of Dower.

AND the Defendant by I. D. his Attorney, comes and sayes, that he cannot render the aforesaid A. her Dowry, of the Mannor aforesaid with the Appurtenances, because that he is not thereof Tenant, as of the free-hold, nor was, the day of the issuing forth of the originall Writ of her the said A. nor at any time after: And this he is ready to aver, whereupon he prayes Judgement of the VVrit aforesaid, *&c.*

Iſſue upon the Non-tenure.

AND the aforeſaid *A.* ſaith, that the Writ aforeſaid, for the reaſons before alledged, ought not to be quaſhed, becauſe ſhee ſaith, that the day of the iſſuing forth of the originall Writ of her the ſaid *A.* (to wit, ſuch a day and yeare) the aforeſaid Defendant was Tenant of the Mannor aforeſaid with the Appurtenances, as of his Free-hold, as by the ſame Writ is ſuppoſed; and this he prayes may be inquired by the Country, and the aforeſaid Defendant in like manner, therefore Command is given to the Sheriff, that he cauſe to come here twelve, *&c.*

Alſo *Nonage* may be pleaded in bar of Dower, and then it is thus;

Nonage in Bar of Dower.

AND the aforeſaid *R. M.* by T G. his Attorney, comes and ſayes, that the aforeſaid *N.* ought not in this behalfe to have Dowry, becauſe he ſaith, that the aforeſaid *N.* at the time of the Death of the aforeſaid R. in time paſt her Husband, of whoſe Endowment, *&c.* ſhe was not of that full age, that ſhe ſhould deſerve Dowry, that is to ſay of nine yeares and a halfe: and this he is ready to aver, whereupon he prayes Judgment, whether the aforeſaid *N.* ought to have her Dowry of the Tenements aforeſaid with the Appurtenances, *&c.*

Iſſue of full age.

AND the aforeſaid *N.* ſaith, that ſhee the aforeſaid *N.* was at the time of the Death of him the

the ſaid R. in time paſt her Husband, &c. of ſuch age as that ſhe might deſerve Dowry; that is to ſay, of nine yeares and a halfe and above, and this ſhe prayes may be inquired of the Country, and the ſaid R.M. in like manner, &c. Therefore command is given to the Sheriff, that hee cauſe to come here twelve, &c.

Elopement may alſo be pleaded in bar of Dower and then it is thus;

Elopement in Bar.

AND the aforeſaid I. and L. by T. L. his Attorney, comes and ſayes, that the aforeſaid R. and A. ought not to have againſt them the Dowry aforeſaid, of the Mannor and Tenements aforeſaid with the Appurtenances, of the Endowment of the aforeſaid E. in times paſt her Husband, &c. Becauſe they ſay, that the aforeſaid A. in the life time of the aforeſaid E. in time paſt her Husband, &c Of her own voluntary will and accord at B. in the County of M. left him the ſaid E. in time paſt her husband, and went from him with one M. R. in the Pariſh of S. in the County of M. and after there with the ſame M. did lead her continued life in Adultery, during the life of him the ſaid E. in time paſt her Husband, &c. Without that, that the aforeſaid A. to the ſaid E. her Husband, in the life time of the ſaid E. in time paſt her Husband &c. was reconciled unto him; and this they are ready to aver, whereupon they pray Judgement, whether the aforeſaid R. and A. in this behalfe, ought to have her Dowry, of the Mannor and Tenements aforeſaid with the Appurtenances, of the Endowment of the aforeſaid E. in time paſt her Husband, &c.

Reconcilement pleaded to the Elopement.

AND the aforeſaid R. and A. ſay, that they by any thing before alledged, ought not to be debarred from having the Dowry of the aforeſaid, A. of the Mannor and Tenements aforeſaid with the appurtenances, againſt them the aforeſaid I. L. becauſe they ſay, that after the departure aforeſaid, by the ſaid I. and L. ſuppoſed to be made, the aforeſaid E. in his life time, her the ſaid A. of his owne accord, and without Eccleſiaſticall compelling, at L. did reconcile, and ſuffered her to live with him; and this they are ready to aver, whereupon they pray Judgement, and the Dowry of her the ſaid A. of the Mannor and Tenements aforeſaid with the appurtenances, together with their Damages, by reaſon of the Detainer of the Dowry aforeſaid, to be adjudged unto them, *&c.*

Iſſue upon the Reconcilement.

AND the aforeſaid I. and L. ſay, that the aforeſaid E. in his life-time, did not reconcile in manner and forme, as the aforeſaid R and A. have above alledged, and of this they put themſelves upon the Country, and the aforeſaid R. and A. in like manner; therefore Command is given to the Sheriff, that hee cauſe to come here on three weeks after the holy *Trinity*, twelve, &c.

A man may call to warranty in Dower, and then is the Part ſo called to warranty, ſummoned in the County where he lies, and that by the ayde of the Court, and this is called a Counter-plea of the Voucher in Dower, and is thus.

Counter-

Counter-plea of the Voucher in Dower.

AND the aforeſaid I. by C. B. his Attorney, comes and calls thereupon to warranty R. C. Gentleman, ſummoned in the County aforeſaid, by the ayd of the Court. *&c.*

To this the Defendant may reply, that the party calls to warranty: hath nothing in the Lands, *&c.*

And the aforeſaid I. ſayes, that neither the aforeſaid R. whom *&c.* nor any of his Anceſtors, had any thing in the Tenements aforeſaid with the appurtenances, in his Demeſne as of Fee, in Reverſion, or, *&c.* from the time of the Death of the aforeſaid W. C. in time paſt her Husband, *&c.* unto the day of the iſſuing forth of the original Writ of her the ſaid I. (to wit, ſuch a day and yeare) ſo that he could thereof Enfeoff the aforeſaid *John*, or any of his Anceſtors: And this he prayes may be enquired of by the Country, and the aforeſaid *John* in like manner, herefore Command is given to the Sheriff, that he cauſe to come twelve, *&c.*

An Annuity may alſo be pleaded in bar of Dowry, but is too long here to recite.

To this Action, in caſe the Tenant have no ſpeciall matter to plead in bar, then he may confeſſe the action by *Non ſum Informatus*, or let it paſſe by default, as in the enſuing.

Non Informatus in Dower.

AND the aforeſaid E. by T. S. his Attorney, comes, and the ſame Attorney ſayes, that he is not informed by the ſayd E. his Clyent, of any anſwer for the aforeſaid E. to the aforeſaid P. S. in the

the Plaint aforesaid to be given, and nothing other he thereupon saith, by which the same P. S. should remaine against the aforesaid E. thereupon undefended: Therefore it is considered, that the aforesaid P. S. shall recover her seizin against the aforesaid E. of the third part of the Mannor, Park, Free-warren, Tenements, and Advowson aforesaid with the appurtenances, and the aforesaid E. in mercy, *&c.*

And upon this the aforesaid P.S. prayes the Writ of the Keepers of the Liberty of *England* to the sheriff of the County aforesaid to be directed, to cause him to give her full possession of the third part aforesaid with the appurtenances, and it is granted unto her, returnable here in eight daies after S. *Michael*; and also the same P. S. sayes, that the aforesaid T. in time past her Husband, *&c.* died seized of the Mannor, *&c.* in his Demesne as of a Fee, and of the Advowson aforesaid, as of his Fee and right, and prayes the Writ of the said Keepers of the Liberty, *&c.* to the Sheriff of the County aforesaid to be directed, to inquire of Damages, and it is granted unto her, returnable at the aforesaid Term, *&c.*

Note, that in this as other reall actions, when you plead for the Defendant you say onely (*Comes and saies*) and not as in other Actions, Defends the force and injury, *&c.*

When upon issue joyned you would go to tryall, you must proceed with your *Venire facias*, and *Habeas Corpora*, and Record, as in other actions, and upon tryal the Jury do give in damages for the main profits, from the death of the Husband, and for that you shall have Execution made by the Clark of the Judgments who entreh up your Judgement.

And then you have a writ to the Sheriff, to give possession of a full third part, *&.* which writ being executed by the Sheriff, is thus turned.

BY

BY vertue, *&c.* and to the Shedule annexed (ſuch a day and yeare) I have cauſed to be delivered to *J. B.* Widow in the aforeſaid VVrit named, plenary ſeizin of the third part of the Manor of *L.* with the Appurtenances in the ſame Writ ſpecified (*Viz.* and rehearſe the particulars in the Writ) to be held to the aforeſaid *I. B.* in the ſeveralty by meets and bounds, in the name of the whole Dower of her the ſaid *I. B.* to her the ſaid *I. B.* contingent of her whole Mannor in the Writ ſpecified, as by the Writ aforeſaid to me is commanded *&c.*

Formedon.

In the next place we come to treat of an Action called Formedon; *which is a reall action, and that is in three wayes.*

THE firſt is *Formedon* in the Diſcender, which lieth where Tenant in taile enfeoffed a ſtranger, or is diſſeized and dyeth, the Heir ſhall have a Writ of *Formedon* to recover the eſtate.

The ſecond is *Formedon* in the Remainder, and that lieth where one gives lands in the tayl, and for default of iſſue, the remainder to another in tail, and that for fault of ſuch iſſue the land ſhall revert to the Donor, if the firſt Tenant in tail dye without iſſue, he in the Remainder ſhall have this VVrit.

The third is a *Formedon* in Reverter, and that lieth, where the Tenant in Tayle dies without iſſue, and he in the Remainder dies alſo wrthout iſſue, then the Donor or his Heirs, ſhall have a *Formedon* in Reverter.

VVhere

VVhere Tenant in taile aliens or is disseized, or if a Recovery be had against him by default, and that he die, his Heir shall have a *Formedon*, for the Heir shall not have other Recovery for the possession of his Ancestor then by *Formedon*; but if he be outed, of his own possession, as if he be seized and put out, he shall have his VVrit of Assize.

Formedon lies by the Heire of a gift made before the Statute of *Westminster* 2. where the Donee after the Statute aliens and dies.

VVhere there is a Tenant in Dower or by the Curtesie.

The reversion to another in tayl, if one intrude after the Death of the Tenant in Dower, or by the Heire of courtesie, he in the Reversion shall not have intrusion, but a *Formedon*.

VVoman in tayle takes a Husband, which aliens, and after they are divorced, and after the VVife dyes, the VVife shall in this case have a *Formedon*, and not a *Cui in vita*.

If Tenant in tayle lets for life, and the Tenant for life aliens in Fee, the Tenant in tayle shall have a *Formedon* at his pleasure.

VVhere Land is given to one for life, the Remainder to the Father in Tayl (if it were executed in the Father) and he aliens, the Issue may have a *Formedon in Descender* generally, or may have a speciall VVrit, making mention how it was given for life, the Remainder to his Father in Tayle, and one or other is good.

In conveyance of degrees, you need not name him Heire, but Son of him which was not seized, but it is a surer way to name him Son and Heire to every one, if he were seized or not; but he cannot omit any in his VVrits which were seized.

If the Demandant omit in *Formedon*, one who held the

the Eſtate, that is to ſay, who was ſeized the Writ ſhal abate.

The Demandant in this VVrit ought to make his diſcent by all which hold the Eſtate, otherwiſe the VVrit ſhall abate.

Though the Demandant be made Heire to him which dyed in the life time of his Father, which was not ſeized, yet the VVrit ſhall not abate, but is good.

Note, by the Regiſter it is held, that he ought to make him Sonne to every one, and Sonne and Heire to him which laſt holdes the Eſtate; but if he makes him Sonne and Heire to every one, that is more, and good, notwithſtanding that every one did not hold the Eſtate.

The VVrit is not the worſe, although in the ſame it be mentioned that he is Heire of one, or that he ſhould have ſcarce been Heir to him if he had lived, if he be Heire to him, that laſt was ſeized.

The Demandant in *Formedon*, ought to name him Sonne and Heire to him that was ſeized, but if one ſurvive his Father, and were not ſeized, he need not name himſelfe Heir, but Son onely.

Formedon did abate, for that the Demandant made himſelfe Coſin and Heire to the Donee, where his Father was ſeized after the Death of the Donee, and no mention was made of him.

Eſplees ſhall be alledged in *Formedon in Reverter*, in the Donor and in the Donee, and in *Formedon in Deſcender*, and Remainder, in the Donee onely.

Thoſe Eſplees is as it were the ſeizen or poſſeſſion of a thing, Profit, or Commodity, that is to be taken, as of a common, the Eſplees is the taking of the graſſe or Comnion by the mouthes of the Beaſts that Common there, of an Advowſon by taking the graſſe, Tithes by the Parſon prelented thereto, of VVood, the

the selling of Wood, of an Orchard, the selling of Apples and other fruit growing there: Of a Mill, the taking of Toll is Esplees, and of such like.

NOte, that in a Writ of Right of Land or Advowson, *&c.* The Demandant ought to alledge in his Declaration, that he or his Ancestors took the Esplees of a thing in demand, or otherwise the Pleading is not good.

Formedon in Remainder, he alleadgeth Esplees in the Tenant for life, and not in the Donor.

Formedon in the Remainder, he counts upon the matter without laying Esplees in the Donor, and it is good.

Of what things a Formedon *lyeth, and of what not.*

FOrmedon lyeth of Gorse, but not of an Avowson.

It lies of Pasture for ten beasts, or a certain number, but not of common, for there a Writ called (*Quod permittas,*) &c.

Formedon lies of common in grosse.

Formedon lies of a Corody, that is to say, of Rent and certain breads, *&c.*

It lies for the Moiety, profit of a Mill, which is granted to one and the Heires of his body, and the Donee dyeth, and his Heire is deforced of this profit, now the Heire shall have a Writ of *Formedon in the descender* for this profit.

The forme of the Writ when it is in the *descender* runs thus.

In

In the diſcender.

THe Keepers, *&c.* to the Sheriff of L. greeting, command T B. that *&c.* he render I. C. the Moiety of the profits comming of two Mills of him the ſaid T. B. in M. which R. B. *&c.* gave to T. C. and to the heires of his Body iſſuing, and which after the Death of him the ſaid T. C. *&c.* Ought to deſcend *&c.*

If the *Formedon* be in the Remainder, then the Writ runs thus;

In the remainder.

THe Keepers of the Liberty, *&c.* to the Sheriff of G. Greeting, command A. that he render B. one Meſſuage and twenty acres of land, *&c.* which C. gave to D. and the heires of his body iſſuing, ſo that if the ſame D. dyed without heir iſſuing of his Body, the aforeſaid Meſſuage and twenty acres of Land with the appurtenances, ſhould remaine to the aforeſaid B. and his Heires, and which after the death of the aforeſaid D. to the aforeſaid B. ought to remain by the form of the Donation aforeſaid; becauſe the aforeſaid D. dyed without Heire of his Body iſſuing, as its ſaid, *&c.* unleſſe, *&c.*

If the *Formedon* be in the Reverter, then thus;

In the Reverter.

THe Keepers of the Liberty, *&c.* to the Sheriff of G. greeting, command A. that hee render B. one Meſſuage and twenty acres of Land with the appurtenances. in G. which C. father of the aforeſaid B. whoſe

B. whose Heire he is, gave to J. and E. his wife, and to the Heires of their body issuing, and which after the Death of the aforesaid J. and E. ought to revert to the aforesaid B. by form of the gift aforesaid, for that the aforesaid J. and E. died without Heires issuing of their bodies, as he saies, *&c.*

This writ is called a Summons and hath nine returnes, betwixt the Teste and the returne, and the Processe are the same which are in Dower after the Summons, that is a Grand *Cape*, Writ of *View*, and *Petite Cape.*

In this Action, as also in that of Dower, and other reall Actions, the Plaintiff is called Demandant, and the Defendant Tenant, and in mixt Actions, Plaintiff and Defendant.

Note, that there is great care to be taken by the Attorneys on both sides, in the course of casting Essoines, adjourning and entring *Nerecipiatur* with the Clark of the Essoyes, and getting *Non suites*, for that thereby much prejudice or advantage may come to their Clyents causes.

If we should now in this action, as in that of Dower, descend to the severall declarations, in order to the severall *Formedons*, *in Descender*, *Remainder*, and *Reverter*, together with the various Pleas thereto, it would take up more roome, then can be spared in this little Tract.

Let it suffice that we told you that the Proceedes were much alike to that in Dower.

Let's Proceed to Quare impedit.

Quare impedit is a Writ, and it lyeth where a man hath an advowson, and the Parson dyeth, and another

another presenteth his Clark, or disturbeth me to present, then he may have the said Writ.

Assize of *Darreyn presentment* lies, where I, or my Ancestors have presented before, and where a man may have an assize of *Darreyn presentment*, he may have also a *Quare impedit*, but not contrariwise.

Also if the Plea be depending between two Parties, and be not discussed within six Months, then the Bishop may present by *Lapse*, and he that hath right to present, shall recover his damages, as it appears by the Statute of *Westminster* 2. Chapter the fifth.

Also if one have right to present after the death of a Parson, and bringeth no *Quare impedit*, or *Darreyn presentment*, but suffereth a Stranger to usurpe upon him, yet he shall have a Writ of right Advowson, but this Writ lieth not, unlesse he claim to have the Advowson to him and his Heires in Fee-simple.

A *Quare impedit* may be brought by him who hath a Grant of the next avoydance.

It lies for the Moiety, or third part of the Advowson, and of the Advowson, or Moiety of the third part.

It lies for a Chantry, which is a Donative, and he hath it by Letters Patents, and that it be void, and he present to it his Clark, who is disturbed by another, or another presented to the said Chantry, he which hath the Right, shall have his *Quare impedit*.

Formerly a *Quare impedit* might be brought for an *Abby* or *Priory*.

A *Quare impedit* lay likewise for an Hermitary, its brought formerly against the Bishop, together with others that claim or disturb: The form of the Writ generally is thus.

Quare impedit.

THE Keepers of the Liberty of *England*, &c. to the Sheriff of *L.* Greeting, *&c.* command *A. B.* that juſtly, *&c.* he permit T. L. to preſent a fit Parſon to the Church of L. which is void, and belongs unto his Donation, *&c.*

This Writ is a Summons at the Plaintiffs ſuite, and if there be two or three Defendants, they may all Eſſoyn one after the other, and after they have eſſoyned, your proceeds are the ſame, as in the Action of Partition by a *Pone* and *Diſtringas*, which makes the Proceedings of this Action very tedious, the Defendant uſing all the poſſible delayes he can, for that moſt uſually he hath gotten into poſſeſſion, and ſo holds them Plea with their owne Weapons, and gaines many times a yeare or two the profits of the Tithes.

But in caſe the Church be voide, and that the Plaintiff do feare that the Defendant will get in, or formerly that the Biſhop would Collate his Clarke, then he might have a Writ directed to the Biſhop, which is called *Ne admittas*, and this Writ muſt be brought, while the Action is depending in the Common Bench; whether by *Quare impedit*, or *Darreyn preſentment*, and this Writ ought to be ſued within the ſix Months after the voydance, for after the ſix Months he ſhall not have this Writ, for then the Living may be preſented unto by *Lapſe*, and therefore it is in vain then to ſue this Writ, for that the Title of preſenting is devolved to the Biſhop, but the King might ſue this Writ after the ſix months, having a Writ of *Quare impedit* or *Darreyn preſentment* depending, according to that *Maxim*, *Nullum tempus occurrit regi*, and the Writ of *Ne admittas*, is as followes,

lows; in case it were for the King in his time.

A Ne admittas.

CHARLES by the grace of God, *&c.* To the Venerable Father in Christ *W.* by the same grace Bishop of *Wincheſter*, greeting. We prohibit you, that you admit not any Parson to the Church of S. which is void, as it is said, and for the Advowson wher eof there is contention moved in our Court between us and *A.* (If between private persons) then (between *A.* and *B.*) untill it be discussed in the same Court; whether unto us or unto the aforesaid *A.* it pertaineth to present unto the Advowson of the same Church, *&c.*

Note, that the Defendant as well as the Plaintiff may sue out his Writ, if the Defendant do suppose that the Bishop will admit the Clark of the Plaintiff the suite depending, but as we said before, this Writ of *Ne admittas* lies not, unlesse the Plea be depending in Court, by *Quare impedit* or *Darreyn preſentment*, and for that purpose there is a Writ in the Register, directed unto the chief Justice of the Common Bench, to certifie the King in the Chancery, whether there be any Plea depending before him and his companions by VVrit between (such and such) and by this it seemed, that the *Ne admittas* should not be granted, before the King were certified in Chancery, that such a Plea of *Quare impedit*, or *Darreyn preſentment*, were depending in the Common Bench. But at this time the course is otherwise, that the *Ne admittas* may be granted out of the Chancery directed unto the Bishop, that he shall not admit, *&c.* before that the King be certified in Chancery, that such Plea of *Quare impedit* or *Darreyn preſentment* is depending in the Common Bench.

And if the Truth be that there be no ſuch Plea depending in the common Bench, then the party greived may require the chiefe Juſtice to certifie the King in his Chancery, that no ſuch plea is there depending, upon which the party greived ſhall have a Writ to avoid the *Ne admittas.*

If the Defendant or Defendants in this Action do appear, you muſt prepare your Declaration, wherein you muſt lay down your Title, which many times cauſeth the Declarations and pleadings to be very long in this Action, and therefore cannot be expected to be inſerted here, as in other ſmall ones.

In caſe after ſpeciall pleadings, you come to an Iſſue, and having your Iſſue joyned, and your paper book made up, and that you would go to tryall, you muſt make your *Venire Facias*, which differs not from other *Venire Facias's*, but onely in theſe words, (of a Plea *Quare impedit*) and that made, ſigned, ſealed, and returned, you muſt ſue out your *Habeas Corpus*, and proceed with your Record, as in other.

When you have a verdict for the Plaintiff, and the *Poſtea* returned, and Judgment entred, you may then have a Writ to the Biſhop, to admit your Clark, or to the Metropolitan, which is as thus, when the Recovery is had againſt the Biſhop himſelfe.

The King, *&c.* To the venerable Father in Chriſt *W. Biſhop* of *Wincheſter*, greeting, Whereas *T. L.* Knight in our Court, *&c.* hath recovered againſt you his preſentation to the Vicaridge of *W.* Wee command you, that at the preſentation of him the ſaid T. to the aforeſaid Vicaridge, you admit a fit perſon, *&c.*

And if a man have his recovery againſt any other then the Biſhop, then the Writ that ſhall be made unto the Biſhop ſhall be in this wiſe;

Where

WHereas T. L. Knight, hath recovered againſt I. P. his preſentation, &c. We command you, that notwihſtanding the claime of the aforeſaid I. P. at the preſentation of the aforeſaid T. L. you admit a fit perſon, &c.

Note, that upon this VVrit, he ſhall have an *Alias* and a *Plures*, if the Biſhop do not execute the VVrit, and an Attachment againſt the Biſhop, if need be.

Come we now to Actions of waſte.

THIS Action lies, where Tenant for Terme of years, Tenant for Terme of life, Tenant for Terme of anothers life, Tenant in Dower, Tenant by the Courteſie of *England*, or Guardian in Chivalry, doth make waſte or Deſtruction upon the Land or Houſes, that is to ſay, pulleth down the Houſe, cutting down Timber, or ſuffereth the Houſe willingly to fall, or diggeth the ground, then he in the Reverſion ſhall have a VVrit for the waſte, and ſhall recover the place where the waſte was done, and trebble damages againſt him that ſo committed waſte.

But if a man cut downe Timber without licence, and therewith repaire old Houſes, that is held no waſte, but if hee therewith build new Houſes, then the cutting down of ſuch Timber is VVaſte alſo.

The cutting downe of under-wood, or VVillowes, which are no Timber, ſhall not be ſaid to be waſte; but where they grow in the ſight and ſhaddow of the Houſe.

There are both negligent and voluntary waſtes, and theſe alike puniſhable, as where the Tenant or leſſee, is bound by Law to keepe the Houſes in good repaire, as they were, when hee came to them.

In this caſe, if he do not ſo, but ſuffer any part of it, by his negligence to grow ruinous, this is VVaſte, for which the Leſſor may ſue the Leſſee.

VVhere there is no Timber upon the Lands to make repaire, yet is it waſte to ſuffer it to decay, for this, that the Tenant muſt procure Timber at his own charge.

Its waſte where a man proſtrates, abates, or breaks down any of the houſing, either the whole or part, (that is) any of the principall VValls, or VValls of partition in Chambers, whether they be of ſtone or Mud.

VVhere by a violent tempeſt, *&c.* the Houſe comes to be uncovered, it ought to be repaired by the Tenant in convenient time, otherwiſe it is waſte, to ſuffer the Houſe to be burnt by negligence, *&c.* is waſte.

If the Houſe be ruinous, when the Tenant firſt comes into it, and he pull it down and do not build it up againe, this is waſte.

VVhere a man either takes away, pulls, or breaks down the VVaineſcots, Doores, VVindowes, Benches, or any other things that are inſeparable incidents of the Houſe, being ſet up and faſtned by the Leſſor or Leſſee, or other, is waſte.

What is ſaid to be Waſte in Trees or Woods.

WHere there is Oake or Aſh which are held Timber in moſt Countrys, (and Elme in ſome Countries where Timber is ſcarce) whether young or old, above or under twenty years of age, to fell this, or to imploy it to build a new Houſe, or a new Room, or any other purpoſe then to the repaire of the old Houſe, or Houſing which are on the Land, or were at the time of the Leaſe, &c. in decay by age or Tempeſt, is waſte.

If a man fell Timber, although with an intent for Reparations, and if he after ſell it, or imploy it to any other uſe, this is waſte, and if after ſale he buy it again, and then imploy it for Reparations, yet this hath been held to be waſte.

VVhere a man fells Timber for Reparations and ſo imploys it, yet if it be done at ſuch an unſeaſonable time, as that the Timber die in the root; this is waſte.

To cut down a VVood, and after to ſuffer cattell to crop it when its newly felled, whereby it is killed, or to root and ſtub it up, this is waſte.

To cut down Timber Trees for fire-boote, hedge-boote, &c. where there is enough of other boote, this is waſte.

To cut down ſuch Trees for fireing, as are fit for better uſe, being Timber, and onely hollow, and dry at the top, is ſaid to be waſte.

But if they be hollow, dry, and dead throughout, that they beare neither fruits nor leaves in Summer, if the Tenant cut down ſuch Trees for fire-boote, it is no waſte.

To cut down more for fire-boote, hedge-boot, and

houſe-boote, (to keep it as he found it) then is neceſſary, or to cut down green wood, when there is ſufficient dry, and dead wood, is waſte.

To cut down Fruit-Trees, Apple-Trees, or Pear-Trees, is waſte, if they be growing in a Garden, although for Reparation, is waſte.

Such Fruit-Trees although halfe broken by the winde or otherwiſe, if they do yet beare Fruite, or the young ſprings of them, that may beare fruite, if the Tenant cut them downe, or pull them up, it is waſte.

Where a man ares up deepe Meadow, not plowed in mans memory, or grubs up wood by the roots, and turns it into arable, or on the contrary, turns arable into wood, its waſte.

To open or digg new Quarries, for Coale, Stones Mettall, Gravell, Lyme, Clay, or the like, this, unleſs there be ſpeciall words in the Leaſe to warrant it, is waſte, although it be not waſte for a man to dig forward in a Mine that was opened before.

Its no waſte to dig the Land, for Gravell, Clay, *&c.* For neceſſary reparations, *&c.*

HAving gone thus far in ſhewing what is waſte, let the Attorney be well adviſed he bring not an Action of waſte, where the Leaſe or other writing, by which the Tenant holdeth or claimeth, have that clauſe in it (without impeachment of waſte) in which caſe the Leſſee can do no waſte, *&c.*

For the unfolding of this clauſe (without impeachment of waſte) obſerve that,

An impeachment of waſte doth ſignifie a reſtraint from committing of waſte, in Lands or Tenements, *&c.*

And this word (without) added to impeachment of waſte, intimates a liberty to commit waſte, and an

Eſtate

Eſtate without any ſuch reſtraint.

Thoſe and the like words inſerted in the Deed, &c. are ſaid to be annexed to the Eſtate, and they doe change the quality of the Eſtate, and make the Tenant herein, in the nature of a Tenant in Taile, and it adds that priviledge thereunto, that they give the Leſſee a Power and Intereſt to make waſte, and to diſpoſe the things to his owne uſe, and here if the Leſſor bring an Action of waſte, the Tenant may bar him with this clauſe.

If it be not thoſe very words, or of the like ſenſe, they are not good, for if the words be, without impeachment of waſte by any Writ of Waſte, the words in this caſe are more tyed up, and are not ſo large, they give not ſuch a power to the Tenant, nor alter the property; they onely diſcharge the Action, ſo that the Land-Lords can bring no action againſt the Tenant for the Waſte done.

The words (without impeachment of Waſte) muſt be inſerted in the ſame Deed, whereby the Eſtate is made, or another Deed made at the ſame time, for if he make his Leaſe without this clauſe, and after willeth that the Leſſee ſhall hold without impeachment of waſte; its held, thoſe words work nothing, either to diſcharge the Action, or give an intereſt.

If a man make a Leaſe for life, and by his Deed grant that if any waſte be done, it ſhall be redreſſed by Neighbours, and not by Suite or Plea, yet an Action of Waſte will lye.

This priviledge gained by thoſe words, where it is, may be loſt, for it is annexed onely to privity of Eſtate: And therefore if one that hath this priviledge annexed to his Eſtate, agree to change his Eſtate, the priviledge is gone; as where he that hath a Leaſe for yeares, with this clauſe in his Deed, accept

cept of a Deed of confirmation of his Eſtate without this clauſe.

The Proceſſes incident to this Action are,

1. A Summons which is made by the Curſitor of the County, where the Houſe or Land lies.

This Summons, if againſt a Tenant in Dower, is as followes,

THE Keepers of the Liberty of *England*; *&c.* To the Sheriff of *L. &c.* If *A.D.* ſhall ſecure thee, *&c.* Then Summon by good Summoners *T. B.* which was the VVife of *C.* that ſhe be before our Juſtices at *Weſtminſter*, on the morrow after the holy *Trinity*, to ſhew wherefore ſhe hath made waſte, ſale, and Deſtruction, in the Lands, Houſes, Woods, and Gardens which ſhee holds in Dowry of the Inheritance of the aforeſaid *A.* in *N.* to the diſinheriting of him the ſaid *A. &c.*

Neither in this Writ nor in a Writ of Waſte againſt a Guardian, a man ſhall not be tyed to rehearſe the Statute which gives a Writ of Waſte, for that very reaſon, that they were actionable before the Statute.

If the Writ be againſt Tenant for Terme of life, or of yeers, then it goes in this form,

THE Keepers, *&c.* if *A. &c.* Wherefore by the Common Councell of the Common-wealth of *England*, It is provided that it ſhall not be lawfull, for any to make Waſte, ſale, or deſtruction, in Lands, Houſes, Woods, or Gardens; the ſaid *B.* of Lands, Houſes, and Gardens in *L.* which the aforeſaid *A.* demiſed unto her, *&c.* hath made waſte, *&c.*

This Writ being returnable on the day of three weekes after Saint *Michael*, the Defendant may if he pleaſe, Eſſoyn upon that return, which if he do, then the

the Plaintiff may adjourne it unto the morrow after St. *Martin*, which if ſo, then the next Proceſs is a *Pone*, which is to be made by the Philizer of the County, and may be made returnable in eight dayes of Saint *Hillary*.

Vpon the returne of this *Pone*, and filing it with the Philizer, he maketh out a *Diſtringas* which you may have returnable in eight dayes of the Purification of the bleſſed Virgin *Mary*, as we ſhewed before in the caſe of Partition, *&c.* And upon that *Diſtringas* you may have an Amerciament, in caſe the Defendant appeare not; and then an *Alias* and *Plures Diſtringas*, and further Amerciaments. And as I told you before in other Actions, in caſe the Defendant Eſſoyn not upon the Summons, he may upon the *Pone*. In caſe the Defendant appear, and that you declare, your form is as follows; in caſe it be againſt Tenant for years,

Wilt. ß.

A. *A.* Knight and Baronet, was ſummoned to anſwer *W. Earle* of S. of a Plea wherefore, whereas by the Common Councell of the Common-wealth of *England*, it is provided, that it ſhall not be lawfull for any to make waſte, ſale, or deſtruſtion of Lands, Houſes, Woods, or Gardens, to him demiſed for Terme of life or yeares, he the ſaid *A.* of Houſes in D. which he held for terme of yeares, by the demiſe of the aforeſaid Earle, hath made VVaſte, Sale, and deſtruction, to the diſinheritance of him the ſaid *Earle*, and againſt the forme of the proviſion aforeſaid, *&c.* and whereupon the ſame *Earle* by *E. H.* his Attorney ſayes, that whereas he himſelfe was ſeized of one Meſſuage with the Appurtenances called B. Farme Houſe in D. aforeſaid in his Demeſne as of Fee, and being ſo thereof ſeized, (ſuch a day and

year)

yeare) at D. aforeſaid, did demiſe the meſſuage aforeſaid, with the appurtenances, (amongſt other things) to the aforeſaid *Anthony*, to have and to hold to him the ſaid A. and to his Aſſignes, from the Feaſt of St. *Michael* the Arch-Angell then laſt paſt, unto the end and Terme of twelve yeares from thence next following, fully to be compleat and ended; by virtue of which demiſe, the Aforeſaid A. into that Meſſuage with the Appurtenances did enter, and was thereof poſſeſſed, and he being thereof poſſeſſed, the ſame A. made waſte, ſale, and deſtruction in the meſſuage aforeſaid with the Appurtenances, of Houſes, that is to ſay, by throwing down two Barnes, the price of either of them twenty pounds, parcell of the meſſuage aforeſaid above demiſed, and two Houſes called out-Houſes, the price of each of them eight pounds, in like manner parcell of the Meſſuage aforeſaid, above, as aforeſaid demiſed, and the Timber of the ſame Barnes and Houſes ſo thrown down, taking, burning, and ſelling to the diſinheritance of him the ſaid *Earle*, and againſt the form of the proviſion aforeſaid, whereupon he ſaith that he is damnified, and hath damage to the value of one hundred and fifty pounds, and thereupon he brings his ſuite, *&c.*

And the aforeſaid A. by I. D. his Attorney, comes and defends the force and injury when, *&c.* and whatſoever, *&c.* And by proteſtation that the aforeſaid two Barnes, and two out-Houſes, were not parcell of the meſſuage aforeſaid, in him the ſaid A. by the aforeſaid *Earle*, in forme aforeſaid demiſed; by proteſtation alſo, that the ſame Barnes or out-Houſes were not of ſo much value as the ſaid Earle by his Declaration aforeſaid, hath above ſuppoſed, for Plea he ſaith, that he hath made no waſte, ſale, or deſtruction in the Meſſuage aforeſaid, as the aforeſaid *Earle* hath

hath above againſt him declared, and of this he puts himſelfe upon the Country, and the aforeſaid *Earle* in like manner. Therefore command is given to the Sherif that he cauſe to come there in eight dayes after the purification of the bleſſed *Virgin Mary*, twelve, *&c.* By whom, *&c.* And who neither, *&c.* To recognize, *&c.* Becauſe as well, *&c.*

Thus you have a Declaration in waſte, and a Plea pleaded to it, and iſſue joyned, and this is againſt Tenant for Terme of yeares; now the Declarations in this action vary, as to the ſeveral perſons that bring the Action, and the ſeverall perſons againſt whom it is brought.

As where it is brought by the Heire in tail, againſt Tenant for life.

Where it is againſt Tenant in Dower, as before you ſaw in the Summons.

Alſo where the Purchaſer of the Reverſion brings it againſt Tenant for years.

Alſo it may be brought after a Fine levied; in all which caſes the Declaration muſt vary according to the cauſe, in all which caſes, as alſo in divers other proceedings of other natures, I refer you to a Book printed in *Eaſter* Term laſt, intituled, Declarations and Pleadings in Engliſh, Collected by *Richard Brownlow* Eſq. which would ſwell this ſmall Tract beyond its intended bigneſſe.

Now, as the Declarations are various, ſo are the Pleas incident to them, for they may be either General or Special.

The generall Plea is, No waſte made, *&c.*

The ſpeciall Pleas are many, either in way of Juſtification, or excuſe, as the caſe is.

It is a good Plea, if the waſte be laid, to be in not repairing, *&c.* That it was repaired before the Action brought, and this muſt be pleaded ſpecially.

But

But to plead it was repaired after the action brought, it is no good Plea.

It is a good Plea to any waſte, that the Leſſor gave Authority to do it.

It is no good Plea to ſay, that the Plaintiff did covenant to deliver Timber from off the Land, to do it, and refuſeth, for the Defendant in this caſe may take it.

It is a good Plea to ſay, the Houſe or Trees were burnt or ſpoyled, by fire, water, or winde, or that the ruine of them was cauſed by ſome extraordinary Act of God.

It is a good Plea to ſay, that the Houſe fell before the Leaſe, or that it was ſo extraordinary ruinous, and the Timber ſo rotten, as that it would not bear repairing.

It is a good Plea to ſay, that the leaſe is ſurrendred to the Leſſor, and he hath accepted it.

It is a good Plea that the Plaintiff hath entred upon the Land, and before ſuch his entry, there was no waſte committed.

It is a good Plea to plead that the Plaintiff hath granted away his Eſtate, and before the grant there was no waſte committed.

If the Plaintiff by good words do effectually releaſe the waſte, this is a good Plea.

VVhere the Leaſe was made without impeachment of waſte, it is a good Plea on the part of the Defendant.

It is no good Plea in this action for cutting down Timber, or pulling down the houſe, that the Leſſor took away the Timber or materialls, &c.

It is no good Plea, that the Leſſor hath a covenant from the Leſſee not to do waſte.

It is no good Plea for the tenant in an action of waſt for cutting of timber, to ſay, that he cut it and keeps it

it till there ſhall be need, nor to ſay he cut it generally for neceſſary reparations, unleſſe he ſay withall that he imployed it to that purpoſe.

And yet it were but reaſon it ſhould be juſtified to cut it a little before it be uſed, for the drying of it and making of it otherwiſe uſefull, when an occaſion of uſe is apparantly at hand.

It is a good Plea for the Defendant to ſay, that he cut it to make poſts for incloſures, if he can withall preſcribe that there have been alwayes ſuch incloſures there.

But theſe and many other, may now ſat the Election of the Defendant be omitted, and by the late Act of 22. *Octob.* 1650. he may plead not guilty, or ſome ſuch other generall iſſue may be pleaded, and the ſpeciall matter may be given in Evidence.

Upon theſe or any other iſſue joyned, and that you intend to go to tryall, the directions that were given before in Partition, Dower, *&c.* will guide you, both for the making your *Venire Facias*, *Habeas Corpora*, and *Record*, and likewiſe for your tryall and return of your *Poſſea*, and entring of Judgement.

In this Action, as before you have heard, your judgment is, that the Plaintiff ſhall recover the place waſted and his trebble damages.

In caſe the Defendant pleads not, but let it go by default or confeſſeth the Action, then a VVrit of inquiry is awarded, and upon that the Sheriff is to inquire by the Oath of twelve Jurors, what damage the Plaintiff hath ſuſtained, which he returns in an Inquiſition, and then the party hath Judgment to recover the trebble of it, and then hath he as in a Verdict after judgment entred, a VVrit of ſeizin awarded, which is directed to the Sheriff of the County, where the Houſe or lands lye, to give poſſeſſion to the Plaintiff of the place or places waſted, *&c.*

VVar-

Warrantia Carta *comes next to be treated of.*

Warrentia Carta is a Writ that lies for him that is enfeoffed with Warranty, and is afterwards impleaded in an Aſſize, or other Action, in which he cannot Vouch, then he may have this Writ againſt the Feoffor, or his Heire, to compell them to warrant the ſaid unto them.

The Proceſſe in this Action are Summons in the firſt place, which is as follows,

The Summons in Warrantia Carta.

THE Keepers of the Liberty of *England*, *&c.* Command **A.** that juſtly, *&c.* he warrant to **B.** one Meſſuage with the appurtenances in **D.** which holdeth and claimeth to hold of him, and whereof he hath his Deed as he ſaith; and unleſſe, *&c.* Or otherwiſe that juſtly, *&c.* he warrant to **B.** the Manor of **N.** with the appurtenances, and the Advowſon of the Church of **N.** which he holdeth, *&c.* And whereof he hath his Deed; or the Deeds of **D.** his Father or Mother, or any other of his Anceſtors, whoſe Heire he is as he ſaith, *&c.*

And although this Writ ſuppoſeth that he holdeth of the Defendant; yet is it not materiall whether he holdeth of him or no.

And alſo if the Plaintiff hold by Homage *Auaſtrell* of the Defendant any Land, and is impleaded, and hath not any Deed of it, yet he ſhall have this Writ of *Warrantia Carta* againſt the Defendant, and the Writ will ſay, (whereof he hath his Deed) and yet he hath not the Deed to ſhew, but onely holdeth by Homage

Homage Anceſtrel, which imployes a Warranty, and for this in this caſe, theſe words (whereof he hath his Deed) is not materiall.

If a man leaſe Land for Terme of life, rendring a certaine Rent, or make a Gift in taile, rendring Rent without Deed, and after the Leſſee, or Donee is impleaded, in ſuch Action where he cannot vouch then he ſhall have this Writ of *Warrantia Carta*, againſt the Leſſor or Donor, or his Heire, who hath the Reverſion; for this Reverſion and Rent reſerved makes a Warranty in Law, by the Statute of Bigamis the laſt Chapter, although he had not any Deed of it.

If a man give Land to another in Fee, by Deed, by theſe words, (I have given and granted, *&c.*) In this caſe, he ſhall be held to warranty of this Land to the Feoffee, by theſe words, and if the Feoffee be impleaded, he ſhall have a Writ of *Warrantia Carta* againſt the Feoffor by theſe words, (I have given and granted, *&c.*) but not againſt his Heir, for the Heir ſhall not be bound unto Warranty by the Deed of the Father, unleſſe he oblige himſelfe and his Heirs to warranty, *&c.* by expreſſe words in the Deed, as to ſay (I and my Heirs all the aforeſaid Lands, *&c.* will warrant, *&c.*)

Note, that he ſhall not have this Action of *Warrantia Carta* againſt the Feoffee, or againſt him againſt whom he hath Warranty, if he be impleaded in any action wherein he may vouch him, for then he ought to vouch him to Warranty, and if he will not vouch him in the Action, he ſhall not afterwards have a Writ of *Warrantia Carta*.

Note, that the Vouchee is either to defend the Right againſt the Demandant, or to yeeld him other Lands, *&c.* in value, and extendeth to Lands, *&c.* of an Eſtate of Free-hold or inheritance, and not to

any Chattell, reall, personall, or mixt, saving onely in case of a Wardship granted with Warranty; for in the other cases concerning Chattells, *&c.* the Voucher shall have an Action of Covenant, if he hath a Deed: And an Action of the case, or an Action of deceipt, if it be by word of mouth, *&c.*

The Processe whereby the Voucher is called, is a Summons *Ad Warrantizandum*, and whereupon if the Sheriff returne that the Vouchee is summoned, and he maketh default, then there is awarded a *Magnum Cape ad valentiam*, *&c.* When if he make default again, then Judgment is given against the Tenant, and he to have over in value against the Vouchee; but if the Sheriff return that he hath nothing, then after a Writ of *Alias* and *Plures*, a Writ of *Sequuntur sub periculo suo* is awarded, *&c.* And the Demandant shall not have Judgement to recover in value, *&c.* because the Vouchee was never awarded.

In the case of Homage *Ancestrell*, which is a special Warranty in Law, and Lands that the Lord hath generally at the time of the Voucher, shall be liable to Execution in value, where he hath them by discent or purchase: But in the case of an expresse Warranty, the Heire shall be charged but onely for such Lands as he had by discent from the Ancestor, which creates the Warranty.

Note, the Lands of the Vouchee shall be liable to warranty, that the Vouchee hath at the time of the Voucher, for that the Voucher is in liew of an Action, and in a *warrantia Carta*, the Land which the Defendant hath at the time of the Writ brought, shall be liable to the warranty.

If a man give Lands in Fee with warranty, and bindes certaine Lands especially to warranty, the person of the Feoffer is hereby bound, and not the Land, unlesse

unleſſe he had it at the time of the Voucher.

A man may bring his Writ of warranty of Charters, *&c.* in what County he will, if the Deed beare not Date at a certaine place or County, for then he ought to bring the VVrit where the Deed beares Date.

But if a man bring a VVrit of *Warrantia Carta*, by reaſon of Homage *Anceſtrell*, &c. Then he ought to bring the writ in the County where the Land lies.

The Summons in this VVrit we have ſhewed you before, upon which VVrit as in the caſe of waſte, the Defendant may eſſoyn, and the Plaintiff adjourn; and for want of an Adjournment of the Plaintiff, the Defendant may enter a Non-ſuit againſt the Plaintiff, provided there were a *Nereceipiatur* firſt entred with the Clarke of the Eſſoynes, upon the day of Exception; and then in that caſe the Plaintiff is put to begin again.

After the Summons comes a *Pone*, and then a *Diſtringas*, and if the Defendant appeare not, an *Alias Diſtringas* ſetting Iſſues, *&c.* And ſo Diſtreſſes in *Infinium*, till there be appearance given.

In caſe the Defendant do appear, then you may declare as in the form following;

The Declaration in Warrantia Carta.

Lincolne, ſs.

E. A. was ſummoned to anſwer H. B. Clark, of a Plea; that he warrant to him three Meſſuages, *&c.* with the appurtenances in C. which he holdeth, and claimeth to hold of him, and whereupon he hath his Deed, *&c.* and whereupon the ſaid H. by *J. W.* his Attorney, ſaith, that whereas a certaine Fine was

levied in the Court of the Keepers, &c. here, that is to say, at *Weſtminſter*, from the day of Saint *Hillary* in fifteen dayes (ſuch a yeare before *O. S. John* and others, naming them) then Juſtices of the Common Bench here, that is to ſay, at *weſtminſter* aforeſaid, and other faithfull perſons then being preſent between him the ſaid *H. B.* Plaintiff and the aforeſaid *E.* and one *Joane* then his Wife, and *R. H.* Deforcients of the ſaid three Meſſuages, &c. with the appurtenances, whereof the Plea of Covenant was ſummoned between them in the ſame Court, that is to ſay, that the aforeſaid *E. I.* and R. did acknowledge the aforeſaid Tenements, with the Appurtenances to be right of him the ſaid H. B. as thoſe which the ſaid H. B. had of the gift of the aforeſaid E. I. and R. and the ſame remiſed and quite claimed, from them the ſaid E. I. and R. and their Heires, to the aforeſaid H. B. and his Heires for ever, and moreover the ſaid E. granted for himſelfe and his Heirs, that they would warrant the aforeſaid H. and his Heirs, the aforeſaid Tenements, with the appurtenances againſt all men for ever. By virtue of which fine the ſaid *H. B.* was ſeized of the Tenements aforeſaid with the appurtenances in his Demeſne as of Fee, and he the ſaid H. B. ſo being thereof ſeized, one I. D. arrayed againſt him the ſaid H. a certaine aſſize of novell diſſeiſin of the Tenements aforeſaid with the appurtenances, before *P. W.* one of the Juſtices of the Common Bench, and R. C. one other, &c. Juſtices aſſigned to take the aſſiſes in the County of *I.* aforeſaid, which ſaid Aſſiſe depending, he the ſaid H. often required the aforeſaid E. that he would warrant to him the Tenements aforeſaid with the appurtenances, yet the ſaid E. hitherto hath denied to warrant to the ſaid H. the Tenements, aforeſaid wi[th]

the Appurtenances, and yet doth deny. Whereupon he ſaith he is damnified, and hath damage to the value of five hundred pounds, and thereupon he brings his ſuite, *&c.*

The Defendant acknowledgeth the Action.

AND the aforeſaid *E.* by *J. E.* his Attorney comes *&c* and ſaith, that he cannot deny the aforeſaid action of the ſaid H. neither but that the writing aforeſaid is the deed of him the ſaid *E*, nor but that he did give and grant by that writing to the ſaid H. and his Heires, the tenements aforeſaid with the appurtenances, neither, but that he by that writing is held to warrant to the ſaid H. the Tenements aforeſaid with the appurtenances in the forme in the which the ſaid H. hath above declared againſt him: therefore it is conſidered of, that the ſaid E. ſhall warrant to the ſaid H. the tenements aforeſaid with the appurtenances for the place and time, and nothing of being in mercy of him the ſaid H. becauſe he came the firſt day by ſummons, *&c.*

Here you have a Declaration and judgment by confeſſion.

NOte, if a man recover his Warranty in *Warrantia Carta*, and after he is impleaded in an action in which he cannot vouch as by aſſiſe, or by *Scire facias* upon a fine, now it ſeemes that he ought to have notice to him againſt whom he had received his warranty of his action; and to pray him to ſhew what plea he will plead to defend the Land.

NOte, that a man may bring a Writ of *Warrantia Carta* at the Common Law, for warranty made of Lands holden in ancient Demeſne.

Having gone through Warrantia Carta, *we come now to* Audita Querela.

What the Writ is.

Audita Querela is a VVrit, and lyeth where one is bound in a Statute Merchant, Statute Staple, or Recognizance, or where Judgement is given againſt him for Debt, and his body in Execution thereupon, then if he have a releaſe, or other matter ſufficient to be diſcharged of Execution, and hath no day in Court there to plead it, then he ſhall have this VVrit againſt him that hath ſo recovered, or againſt his Executors.

Againſt whom, and for whom this VVrit is brought.

THis VVrit lieth for the Party himſelfe againſt whom the Judgement is had, by whom the Statute is made, or his Heire, Executor, or Adminiſtrator, upon whom the charge is come, or comming. Sometimes it is to be had againſt the Proſecutor himſelfe, and ſometimes againſt him and others that ought to bear a part of the burthen with him.

It lies againſt Ter-Tenant, without naming him Party, or Privy.

VVherefore this remedy is given, there muſt be theſe three things in the caſe;

1. There muſt be a charge or burthen come, or comming upon him that is to have it.

2. It muſt be ſuch a charge, &c. as by Law, hee ought to be diſcharged of, in part or in whole.

3. It is ſuch a caſe as where he hath no other remedy for his reliefe.

Theſe

These following Cases will cleare these particulars.

If a Judgement, or Judgement and Execution be had against one, and the Plaintiff release him of the Debt in fact, or that he be released of it all, or part of it in law, and yet he sueth out Execution.

If a Judgement be had against me and another, and one of us be taken in Execution, and after are released of the Debt, or discharged of the Execution by the party himselfe, the other may take advantage of this.

If Judgement be against two trespassors, and one taken, and the damage satisfied by him.

The like case if a Judgement be against two or more, upon one bond, and Execution is done upon, and satisfaction made by one of them.

If Executors sue for, and recover a Debt, and after the Testament is revoked, in this case, the Party that hath paid the money, may get the same certified by the Bishop and then he shall have his remedy against the Executors.

If the Conusor after Execution tender the money due upon the Statute to the conusee, and he refuse it, or if part of it were paid at the day, and he tender the rest in court, and yet the conusee go on to extend it, in these cases the Party grieved may have this remedy.

If the Statute were delivered to a stranger to keep till certaine conditions were performed, and he doth deliver it to the conusee, or he doth get it by fraud from him, before the condition be performed, in this case he shall be relieved by this Writ.

If an Infant enter into a Statute, he may avoide it whilst hee is in his *Minority*, by this Writ, and the course is this: In case he be in prison, this Writ may be sued out by some of his Friends to the Justices,

whothereupon command the Sheriff to bring the Infant into Court to be ſeen; and if the Iudges judg him to be within age, after proceſſe ſent to the Conuſee, they wil diſcharge him. But if one that hath been an Infant, be ſued upon it, after he is of full age, this Writ doth not lie for him.

If divers be bound by one ſpecialty [Conjunctim and diviſim] and the Obligee get Judgment and Execution againſt one of them, and after ſue the Eſpecialty againſt the other, he ſhall have this Writ for his reliefe.

If in the *Interim* betwixt Verdict and Judgement, the parties have put themſelves into Arbitrement for the Suit, or the Defendant get a Releaſe from the Plaintiff, and yet the Plaintiff doth proceed, the Defendant may have this Action; but where theſe caſes are put, its to be conceived before the Writ brought the judgement is given.

Where a man ſues for a thing, for which he had formerly judgement and Execution, there this Writ lies.

Where a man and his Heires are bound by any Bond, or bill, *&c.* and the Obligee ſue it, and recover againſt the Heirs, and after ſue the Executors for the ſame cauſe; or on the other ſide after recovery had againſt the Executors, he ſue the Heirs, here the Heir or Executor ſo ſued may have this remedy, for that he cannot plead it in Bar.

Where a Leſſee covenants for him and his Aſſignes, to repair Houſes, or to do any other thing chargeable upon him, after aſſignment of his Eſtate, and he aſſign his Eſtate, and after the Leſſor, who may ſue either of them, ſue and recover againſt one of them; in this caſe, if after he ſue the other for the ſame cauſe, he may have this remedy.

The Proceedings in this Action are as follow,

Where

Where before Execution this Writ is brought by the Party grieved himſelfe, or by his Heirs, or Executors, he ſurmiſing good cauſe for this Writ, muſt give good baile to proſecute, and ſtand to the Judgement of the Court, upon which he may have a *Superſedeas*, to ſtay Execution; but when the Party is in priſon, then it ſeems there is no Baile put in, till the Conuſee or Obligee anſwer in the *Audita querela*.

Note, that after Execution executed, no *Superſedeas* doth lie.

The Proceſſe before Execution are a *Venire facias*, and an *Alias*, &c. And then if he come not in, the uſe hath been that upon motion, the party in priſon may be diſcharged.

After thoſe Proceſſe a *Diſtringas* and upon default after appearance, and a plea pleaded, a *Diſtringas ad audiendum judicium*, for by ſuch default Judgement ſhall be given againſt him, and after Execution the Proceſſe is a *Scire facias*, when the Party is in Priſon upon a *Capias ad ſatisfaciend.*

Where a man puts in Baile in this Action, he ſhall not be diſcharged of this Baile, but muſt continue till the Suit by the *Audita Querela* be determined, for albeit the Party do not proſecute after the appearance of the Defendant, yet he muſt continue in priſon, or ſtand upon his Baile.

If a man be Non-ſuited in one *Audita querela*, yet he may have another, but he ſhall have no *Superſedeas* in the ſecond as he had in the firſt.

Audita Querela upon the Statute of Usury.

IT was commanded to the Sheriff &c. whereas out of the grievous complaint of *T. B.* of, *&c. R. B.* of, *&c.* And *A. A.* of, *&c.* It was shewed to the Keepers, *&c.* Complaining, that whereas in the Statute in the Parliament held, *&c.* (reciting the Statute of Usury) as by the said Statute more fully appeareth And whereas one *N. W.* such a day and year at *C.* did lend unto one *R. B.* ninety pounds, for one year then next following, and that in consideration thereof, it was then and there agreed, between him the said *N. W.* and the aforesaid *R. B.* that the said *N. W.* should have by way of gaine and profit for deferring and giving day of payment of the aforesaid ninety pounds for the time aforesaid, ten pounds, to be paid to the said *N. W.* together with the aforesaid ninety pounds, and also eighteen yards of black Frizes, of the price of every yard sixteen pence, which said *R. B.* afterwards, that is to say, such a day and yeare at *C.* aforesaid, made his Testament, and appointed and ordained *Agnes*, the wife of the aforesaid *A. A.* and one *T. Bartram*, *L. B.* and *I. B.* his Children, Executors of his Testament aforesaid, and the same *A. A.* and one *W. L.* Gentlemen, Guardians of the aforesaid *T. B.* Sonne and Heire apparant of the said *R. B.* during the minority of the aforesaid *T. B.* and afterwards there dyed, after whose death, that is to say, (such a day and yeare, at *C.* aforesaid) it was agreed between him the said *N. W.* and the same *A. A.* and *W. L.* that the aforesaid *N. W.* should defer and give day of payment of the aforesaid ninety pounds, of the principall Debt, and of the aforesaid ten pounds for the Use aforesaid, from the end of the aforesaid yeare, for the

the payment thereof as aforeſaid, before agreed, untill Wedneſday next after the Feaſt of *Eaſter* then next following, and that the ſaid A. A. and *W. L.* or one of them would pay to the ſaid *N. W.* ſix pounds thirteen ſhillings and four pence for gaine and uſe, for deferring and giving day of payment of the ſame ninety pounds of principall Debt aforeſaid, and ten pounds for the firſt uſe aforeſaid, and alſo that A. A. and *W. L.* and the aforeſaid *T. B.* and *R. B.* ſhould by Recognizance acknowledge before *R. M.* then one of the Juſtices, *&c.* themſelves to owe to the aforeſaid *N. W.* foure hundred pounds, for the ſecure payment of the aforeſaid ninety pounds of principall Debt aforeſaid, and ten pounds for the firſt uſe aforeſaid, and alſo of the aforeſaid ſix pounds thirteene ſhillings and foure pence for the ſaid ſecond uſury aforeſaid, on the aforeſaid Wedneſday next, after the Feaſt of *Eaſter*, betweene the hours of one and foure in the afternoone of the ſame day, which ſaid ſeverall ſums in the whole, doe amount unto one hundred ſix pounds thirteene ſhillings and foure pence, whereupon the ſaid *T. B. W. L. R. B.* and *A. A.* (ſuch a day and yeare aforeſaid) at *C.* aforeſaid, before the aforeſaid *R. M.* did acknowledge themſelves to owe to the aforeſaid *N. W.* the aforeſaid foure hundred pounds for the ſecure payment of the aforeſaid one hundred ſix pounds, thirteene ſhillings and fourepence, on the aforeſaid Wedneſday next after the aforeſaid Feaſt of *Eaſter*, according to the forme, and effect of the agreement aforeſaid, and ſo that recognizance and forme aforeſaid acknowledged for the payment of the ſaid ninety pounds principall debt aforeſaid, and the aforeſaid ſixteene pounds, thirteen ſhillings and four pence for the uſe aforeſaid, exceeding the rates of ten pounds for a hundred pounds

pounds by the yeare, by virtue of the Statute aforeſaid, publiſhed in the Parliament holden, &c. is void in the Law; as the ſaid T. B. R. B. and A. A. by wayes and meanes convenient, are ready to make appear. Notwithſtanding which the aforeſaid N. W. now lately hath unjuſtly proſecuted Execution of the aforeſaid foure hundred pounds, by reaſon of the Recognizance aforeſaid in forme aforeſaid acknowledged againſt them the ſaid T. B. R. B. and A. A. to the great damage and grievance of them the ſaid T. B. R. B. and A. A. whereupon the ſaid T. B. R. B. and A. A. to the Keepers, &c. have ſupplicated to provide for them a fit remedy in this behalfe; the ſaid Keepers, being willing to do herein that which is juſt, and to exhibit full and ſpeedy Juſtice therein to the ſaid T. B. R. B. and A. A. have commanded the Juſtices here, that hearing the complaint of them the ſaid T. B. R. B. and A. A. and calling before them the parties aforeſaid in this behalfe to be called, and hearing their reaſons thereof, they cauſe due and ſpeedy accompliſhment of Juſtice to be done to them the ſaid T. B. R. B. and A. A. as of right, and according to the Law and Cuſtome of the Common Wealth of *England*, ought to be done, and to that purpoſe, that they ſhould cauſe to come here at this day, that is to ſay (ſuch a returne) the aforeſaid N. W. to anſwer in and upon the premiſes, and further to do that which the Juſtices here ſhall think convenient, and conſider of, and now here at this day (naming the return) came as well the aforeſaid T. B. R. B. and A. A. by W. B. their Attorney, as the aforeſaid N. W. by L. C. his Attorney, and hereupon the ſaid T. B. R. B. and A. A. ſay that the aforeſaid N. W. (ſuch a day and yeare) lent unto one R. B. ninety pounds for one yeare then next following, and that in conſideration thereof, it was then and there agreed

agreed between him the ſaid N. W. and the aforeſaid T. that the ſaid N. W. ſhould have in gaine and profit, &c. and ſo go on as before in the Writ, untill you come to void in the Law. And this he is ready to aver, whereupon he prayes judgment, and that the aforeſaid N. W. may be barred from having his Execution aforeſaid, by virtue of the Recognizance and judgement thereupon in Court here had, and that the ſaid T. B. and A. B. may be diſcharged thereof, &c.

And hereupon the ſaid N. W. prayeth liberty to plead, &c.

NOte, that if a man enter into a Statute or Recognizance, which either is defective in it ſelfe, or is avoydable by ſome Law, or becauſe the Contract is uſurious, as in the Declaration before ſpecified; or that there be a defeazance upon it, which is kept from the Conuſor, or that the Statute is delivered up by the Conuſee (which is a releaſe in Law) and the Connſee get it againe, and the Conuſee doth go on in the Execution of it. In all theſe cales, the Party grieved may have this remedy and Writ for his reliefe.

If the Sratute were made through hard impriſonment of the Couſor, he may have this Writ, &c.

NOte, *I. W.* brought an *Audita querela*, upon the Statute of Uſury, to be relieved in making void a judgement given upon a Bond, where he hath pleaded that it was not his Deed, and it was diſallowed, and judgement thereupon as followeth;

AND hereupon the Premiſes being ſeen, and by the Juſtices here more fully underſtood; it ſeemed to the ſame Juſtices here that the aforelaid Writ of

of hearing the complaint, and the matter in the ſame contained, was inſufficient in Law to bar the ſaid R. from having his Execution aforeſaid, by reaſon of the Recognizance aforeſaid: Therefore it is conſidered of, that the aforeſaid *J. W.* take nothing by his Writ of hearing the complaint, that the aforeſaid R. may proſecute for the Execution, if, *&c.*

If a man ſue an *Audita Querela* upon a Releaſe, and afterwards he is Non-ſuit, he ſhall not have an *Audita Querela* upon new matter, and yet the Law ſeems contrary to this, where it ſays, he ſhall not delay Execution upon a new *Audita Querela.*

If the Conuſor after Execution tender the money due upon the Statute to the Conuſee, and he refuſe it, or if part of it were paid at the day, and he tender the reſt in Court, and yet the Conuſee go on to extend it, in theſe caſes the Party grieved may have this remedy.

The Proceſs, as we told you in *Audita Querela*, were *Venire facias*, *Diſtringas*, *Alias* and *Plures Diſtringas*; only take this further, that if the Sheriff return, that he hath nothing *&c.* Or that he cannot be found, *&c.* Then he ſhall have a *Capias* againſt the Defendant.

Curia Claudenda. *This is a Writ which lies at Common Law, and is for reparation of Fences and Hedges, Mounds, &c.*

THis Writ lyes, where a man ought to incloſe his Soyl or Land from his Neighbours, and will not doe this, then he may have this VVrit, and it may be ſued before the Sheriff in his County Court, or

or in the Court of Common Bench. If the Writ be before the Sheriff, then it runs thus,

THe Keepers, &c. To the Sheriff, &c. That justly &c. he close his field in *N.* which is open to the nocument of the Free-hold of *B.* in the same Towne, or in another Village, which he ought, and was wont to incloſe, as the said B. sayes, and as he is reasonably to shew that he ought to incloſe it, &c.

If in the Common Bench, then the Writ is thus,

THe Keepers, &c. Command A. that justly. &c. he close his field in N. which is open to the Nocument of the Free-hold of B. in N. aforesaid, which he ought, and was wont to incloſe, and unleſſe, &c.

This Writ may be removed out of the County, at the Suit of the Plaintiff, without cause.

But if the Defendant will remove it, he ought to shew cause in the Writ.

And in the Writ to remove it by the Defendant, shall be this clause, (let Execution of this Writ be made, &c. if the cause be true, otherwise not.)

This Writ lies not, unleſſe against him who hath the Close next adjoyning unto the Land of the Plaintiff, and lies not, unleſſe for him who hath an Estate of free-hold in the Land, for Tenant for Term of years shall not have this Writ.

If a man have a Common in a great waſte, to him and his Heirs, or for Terme of life, and he who hath the Land adjoyning to this waſte, who ought to incloſe betwixt the waſte and his Land, will not make his Incloſure, yet the Commoner shall not have this Action for the Damage which he hath sustained, &c. Although the Common may distraine the Beasts;

Damage

Damage feasant to the Land which is his Common. For the Writ supposes to the Nocument of the Freehold of the Plaintiff, which proveth that the Plaintiff ought to have the Land adjoyning, if he will have this action.

The Processes in this action is Summons, Attachment, and Distresse, *&c.*

The view lies in this Writ.

If the Defendant appeare, and afterwards make default, he shall have a *Distringas* in liew of the Petite *Cape*, &c. and if he make default at the day of the Returne of this Writ, he shall have a Writ to inquire of damages, and also a Writ to distrain to the Reparations.

If the Party appear, and that you come to declare, take these observations.

IN your Declaration you ought to shew the certainty of the Land which the Plaintiff hath there adjoyning unto the Defendants Land, and the certainty of the Land which the Defendant hath there adjoyning, who ought to inclose, and then you ought to alledge prescription to inclose.

Parco Fracto, *or breaking the pound comes next to be handled.*

THIS Writ lies, where a man distrained the Beasts of another man doing hurt in his Land, or for Rent or Service behind, and sends them into the Common Pound, or into any other Pound or place, which may be called a lawfull pound, and he which hath the property of the beasts, or another

ther perſon take the Beaſts out of the pound, and driveth them to a place where he pleaſeth; In this caſe, he that diſtrains for Damage done unto him, or for Rent or Services behind, may have this Writ; wherein he ſhall have Judgement to recover Damages for it, and to diſtrain the Catteli again whereſoever he ſhall find them.

For this cauſe alſo is the party offending puniſhable in a Court Leet.

If a man command his ſervant to diſtrain for Rent or ſervices arrear, and the ſervant diſtrain the Beaſts and put them in pound, *&c.* and a ſtranger take them out of the Pound; in this caſe the Maſter, and not the ſervant ſhall have an Action of *Parco Fracto*, for it is the Pound of the Maſter.

If a man diſtrain for Rent or Services, or for Damage feaſant, and put the Beaſts in the Soile, or in the Cloſe of his friend by is Licenſe, and he which owes the Beaſts takes them out of the Cloſe; here he which diſtraines ſhall have this Action, and not he who owed the Cloſe, for he which owed the cloſe may have his Action, wherefore he breake his Cloſe, *&c.* For it is not his Pound, but the Pound of him that diſtraineth, *&c.* The forme of the Writ is thus,

THe Keepers, *&c.* to the Sheriff of *Lincoln.* greeting, if A. *&c.* Then put, *&c.* B. to ſhew, wherefore whereas he the ſaid A. in his damage at N. certaine Cattell, or ſo, the Cattell of the aforeſaid B. had took, and them according to the Law and Cuſtome of the Common-wealth of *England*, had there impounded: The ſame B. the aforeſaid pound by Force and Armes brake, and the Cattell aforeſaid he tooke and led away, and other harms to him he did to the great Damage, *&c.*

Note here, this Writ is by Force and Armes, and it is not put in the Writ what manner of Beaſts they

were, nor what number, nor to whom the property of the Beasts are, unlesse at the pleasure of the Plaintiff.

Where a man commands his servant to distraine for Rent or Services, or for damage-feasant, then the Writ is thus,

TO shew wherefore whereas he the said A. in this damage of N. by B. his servant, hath caused a certaine Bull, or Certaine Cattell, to be taken and the same B. the said Bull or Cattell according to the Law and Custome of the Common-wealth of *England* had there impounded: the aforesaid C. that pound by force and Armes did break, &c.

Where a man distrains for an Amerciament in a hundred; and impounds the Beasts, and the other Party takes them out, the VVrit shall be thus,

WHereas the said A. by B. and C. his Bayliff of the hundred of N. certaine young Cattell of him the said F. at S. within the precinct of the Hundred aforesaid, for a certaine Amerciament, to which he the said F. was amerced in the same Hundred, to the use of the aforesaid A. to be levied, had caused to be taken, and the same B. and C. the same young Cattell, *&c.*

Here in this VVrit it ought to be shewed, that the property of the Beasts were in him who was amerced for that, that he cannot distrain a Strangers Cattell for this Amerciament.

But for Rent or Services arreare, it is otherwise, for there the party to whom those Rents or Services were arrear, may distrain what Cattell he finds upon the Ground, levant and couchant.

This VVrit lies, albeit the impounding be unlawfull, as where the Party that is distrained for Damage feasant,

feasant do offer sufficient amends after taking, and before the impounding, and the Party so distraining doth refuse it.

The like case of one that hath a Replevin, or other coloured Authority (not good in Law) by virtue whereof he gets out the Cattell.

Where a man hath a good Authority, and breaks the Pound before he demand the Cattell of the Keepers of the Pound, and he do interrupt him in the taking of them, in all these Cases the Party grieved may have this VVrit for his remedy.

The Processes in this Action after the Summons, are Attachment and distresse infinite.

Rescues *we come now to treat of, and the rather for that it hath some relation to what we spake formerly of.*

THE word *Rescues* is two wayes applyable, either to persons or things.

To Persons, and that is, when a man is arrested, and he himselfe, or another in his behalfe, doth rescue him.

The other relates to things, and of that we now treat, as having affinity to that of [*Pacto Facto*] immediately before spoken of.

This is a VVrit lying, where one or his servant doth distrain for Rent services, or Damage-feasant, or for any other cause, and being about to impound the Distresse, another taketh it away from him, and will not suffer him to impound it; in this case the Party hurt or grieved may have this VVrit for his relieſe against him that made the rescue, and shall recover Damages for it.

VVhere a man distrains Cattell, and in driving

them to the Pound, they get into the Owners House, and he doth withold them from the distraining, and he will not suffer him to drive them to the Pound, this is a Rescous, for which the Action lies.

It a man be comming to distrain, and the Owner drive away the Cattel, and he that is about to distran doth follow them upon a fresh pursuit, and the Party will not let him have them, but drive them away, in this case he may have this Writ as his remedy.

But if before one be come in sight, the Owner drive out the Cattell, or they go out themselves, so that he misseth of that distresse he intended, this Writ will lie for this.

If the Lord distrain his very Tenant without cause, and unjustly, and it be rescued, it seemes this Action doth lie.

Note, that if any other but the Lord do distrain upon his Tenant without cause, or out of time or place, in any of the Cases before recited this Action will not lie.

The Processes in this Action are as follows.

The first is a Summons, and then Attachment, and Distringas, *and then* Alias *and* Plures Distringas.

The Writ of Summons is thus,

THe Keepers *&c.* To the Sheriff of L. *&c.* If A. shall cause thee *&c.* Then put, *&c.* To shew wherefore; whereas he the said A. in his Damage at S. certaine cattell (or thus) The cattell of the aforesaid B. he took, and them according to the Law and Custome of the common Wealth of *England*, would have there impounded, the aforesaid B. the aforesaid cattell by Force and Armes he did rescue, *&c.* And other harmes, *&c.*

If for services due, as follows. The

THe Keepers, &c. to the Sheriff, &c. if A. ſhall cauſe thee, then put &c. to ſhew wherefore whereas he the ſaid A. in his Fee at S. for Cuſtomes and Services to him due by C. his Servant, certaine Cattell, he cauſed to be taken and them according to the Law, and Cuſtome of the Common-wealth of *England*, &c.

Note, where a man diſtrains Beaſts, and dead Chattels, there the Writ is thus,

To ſhew wherefore, whereas he the ſaid A. in his Fee at S. for Cuſtomes and Services to him due, the Cattell and Chattels of him the ſaid B. he took, and thoſe Cattell he would have impounded, and the aforeſaid Chattels in the name of diſtreſſe, according to the Law and Cuſtome of the Common-wealth of *England*, he would have detained, he the ſaid B. the ſame Cattell did Reſcue, and the Chattels aforeſaid from him the ſaid A. he tooke, and other Harmes, &c.

If the Party appeare not upon the Summons, then as before you are to proceed to Attachment and Diſtreſſe infinite.

In caſe he appeare, you may declare as follows,

Yorke ſſ.

W. C. lately of B. in the County of E. Yeoman, and W. B. lately of B. in the County aforeſaid, were attached to anſwer I. C. Knight, of a plea, that whereas he the ſaid I. in his Fee at B. for Cuſtomes and Services to him due, by N. T. his Servant had cauſed to be taken certain cattel, & the ſame cattell, according to the Law and Cuſtome of the Com-

mon wealth of *England*, would have impounded, there the ſaid *W.* and *W.* the ſame Cattell by force and Armes did reſcue, and other Enormities to him they offered, to the great damage of him the ſaid I. and againſt the publick peace, *&c.* And whereupon the ſaid I. by *I. W.* his Attorney, complaines that whereas he (ſuch a day and yeare) in his Fee at B. that is to ſay, in one hundred of acres of Land, called *W.* parcell of the Mannor of B. with the appurtenances in the County aforeſaid, which T. B. then held of him the ſaid I. as of his Mannor of B. in the County aforeſaid, by Homage, Fealty, and unto Eſcuage of our Lord the King, of forty ſhillings, when it ſhall happen 2 s. and unto more, *&c.* And unto leſſe; *&c.* And by the Rent of five and twenty ſhillings, each yeare, at the Feaſt of Saint *Michael* the Arch-Angell to be paid, as alſo by the ſervice of doing Suit to his Court of Wapentage of H. in the County aforeſaid, from three weekes to three weekes, at the Wapentage aforeſaid to be held, & by the Sheriffgild of five ſhillings every yeare at the ſame Feaſt of St. *Michael* the Arch-Angell, yearely to be payd, of which ſaid ſervices the ſaid I. was ſeized by the hands of the aforeſaid T. as by the hands of the true Tenant, That is to ſay, of the Homage, Fealty, and Suit of Court aforeſaid, as of his Fee and right, and of the Eſcuage and Rent aforeſaid in his demeſne as of Fee; and being ſo ſeized by the aforeſaid N. T. his Servant, did cauſe to be taken certaine Cattell, that is to ſay, two Cowes feeding upon the aforeſaid hundred acres of Land for the Rent, Cuſtomes and Services, unto him due and unperformed, that is to ſay, for the Homage, and Fealty, and for the Rent of five and twenty ſhillings, for one whole yeare, ended at the Feaſt of Saint *Michael* the Arch-Angell (ſuch a yeare) being in arreare, as alſo

ſo for the Suit of the aforeſaid Court of *Wapentage* held at H. aforeſaid (ſuch a day and yeare) undone and the ſame N. the ſame Cattell according to the Law and Cuſtome of the Common wealth of *England* there would have impounded, they the ſaid W. and *W.* the aforeſaid Cattell the day and yeare aforeſaid, at E. aforeſaid by force of Armes, that is to ſay, with Swords, Staves and Knives, they did reſcue, and other harmes, *&c.* And againſt the Peace, *&c.* Whereupon he ſayes that he is worſted, and hath damage to the value of forty pounds, and thereupon he brings his Suit, *&c.*

AND the aforeſaid *W.* and *W.* by H. D. their Attorney comes and defends the force and injury, when, *&c.* and the aforeſaid *W.* ſayes that he is in no wiſe guilty of the treſpaſs and reſcue aforeſaid, as aforeſaid *I. C.* hath above declared againſt him, and of this he puts himſelfe upon the country, & the aforeſaid *I. C.* in like manner, and the ſaid *W. B.* as to the coming by force and armes, ſayes, that he is in no wiſe thereof guilty, and upon this he puts himſelfe upon the Country, and the aforeſaid *I. C.* in like manner. And as to the reſidue of the treſpaſs, and reſcue aforeſaid above ſuppoſed to be done, the ſaid *W. B.* ſayes that the aforeſaid I. C. ought not to have againſt him his aforeſaid Action, becauſe he ſayes, that the aforeſaid T. B. held not of the aforeſaid I. C. the aforeſaid hundred acres of Land, as of his Mannor of B. aforeſaid by the ſervices aforeſaid, as the aforeſaid I. C. by his Declaration aforeſaid hath above ſuppoſed, and of this he puts himſelfe upon the Country, and the aforeſaid I. C. in like manner, therefore as well to the trying this iſſue, as iſſues above joyned, command is given to the Sheriff that he cauſe to come here 15 dayes after Eaſter 12 *&c.* by whom, *&c.* And who neither

ther, &c. to recognize &c. Because as well, &c.

HEre you have a Declaration against two and he one pleadeth generally, not guilty, the other, not guilty as to force and arms, and as to the residue he pleads *Non tenure*, upon which you have an Issue joyned in the cause, where if you were to descend to triall in any of the like nature, your course of proceedings must be as is formerly directed in other Actions.

In this Action you recover damages and costs only.

Assize comes now to be treated of, an Action which formerly was much in use, and although for the present not so much in practice, yet to preserve the knowledge of it, we shall here discover somewhat of the nature of the action, together with the proceedings thereupon.

ASSIZE is a Writ, and it lyeth, where a man is put out of his Lands, Tenements, or of any profits to be taken in a certaine place, as of an Office, &c. and so disseised of his Free-hold (which Free-hold to any man is where he is seised of Lands or Tenements, or profits to be taken in Fee-simple, Fee-taile, for terme of his owne life, or for terme of another mans life) but Tenant by *Elegit*, Tenant by Statute Merchant, Tenant by Statute-Staple, may have Assize, although they have not Free-hold, and this directed by divers Statutes.

IN an assize it is allwayes needfull that there be a Disseisor and a Tenant, or otherwise the Writ shall abate.

Also where a man is disseised, and recovereth by an assize of Novell disseisin, and afterwards is againe disseised by the same Disseisor, he shall have against him a Writ of Re-disseisin directed to the Sheriff to

make

make inquiſition, and if the Re-diſſeiſin be found, he ſhall be ſent to priſon. Alſo if one Recover by an Aſſiſe of Mordanceſter, or by other Jury, or default or by reddition, and if he be another time diſſeiſed, then he ſhall have a Writ, *De poſt diſſeiſin*, and he which is taken and impriſoned for Re-diſſeiſin, ſhall not be delivered without ſpeciall commandement of the King. See the Statutes thereof, *Merton*, Chapter the 3. *Marlebridge*, Chapter the 8. and *Weſtminſter*, 2. Chapter the 26.

There is alſo another Aſſiſe called an Aſſiſe of freſh Force, and lyeth where a man is diſſeiſed of Tenements, which are deviſable, as in the City of *London*, or other Burroughs or Townes that be Franchiſes, then the Plaintiff ſhall come into the Court of the ſaid Town, and enter his plaint, and ſhall have a writ directed to the Major or Bayliffs, and thereupon ſhall paſſe a Jury in the manner of Aſſiſe of Novell Diſſeiſin; but it behoveth that he doth enter Plaint within forty dayes, as it is ſaid, or otherwiſe he ſhall be ſent to the common Law, and if the Officers delay the Execution, then the Plaintiff ſhall have another Writ to have Execution, and a *Sicut alias*, and a *Plures*.

This Aſſiſe branches it ſelf further into an

1. Aſſize of *Darreyn Preſentment*, of which we have before ſpoken.

2. Aſſiſe *de Mortdanceſter*.

An Aſſiſe of *Mortdanceſter* ſhall be brought in like manner, as an Aſſize of Novell Diſſeiſin ſhall be, and in Aſſiſe of Novell Diſſeiſin before the Juſtices of the Common Bench, or of the Upper Bench, a certaine day ſhall be put in there, as unto Thurſday after fifteen dayes after *Eaſter*, &c. But in an Aſſiſe of *Mortdanceſter*, a common day ſhall be given, and fifteen dayes, &c or in eight dayes, &c.

In

IN an Assize of Novel disseisin in the Common-Bench, or in the Upper-Bench, the Justices may give a day out of Terme, so unto Thursday next after such a Feast, &c. for that an Assize hath not any day of a day of return in the Term, but a certaine day which the Justices will give him, and this may be as well out of the Termes in the Terme, and that by the Statute of Articuli super chartas *which directs that in every writ of Summons and Attachment, there ought to be fifteen dayes between the date and the returne of it: But in an Assize of Novel Disseisin in the Common Bench, or in the Upper Bench there needs not to be had fifteen dayes between the date, and the returne of it, as it seems by the Statute.*

In an Assize of Novel disseisin *sued before Justices in Eyre, or before Justices of the Upper Bench or of the Common Bench, the Plaintiff need not to have any Patent to the Justices, for they have authority without Patent, and so have the Justices of Assize authority to take Assize of* Novell disseisin *without any patent made unto them, and that by the Statute of* Westminster, *Chap. the 13.*

If the Assize be brought in the Upper Bench, or in the Common-Bench, then the Writ runs thus,

THe Keepers, *&c.* To the Sheriff, *&c.* Complaint is made to us by A. that B. unjustly and without Judgement, hath disseised him of his Freehold in C. after, *&c.* And therefore we command thee, that if the said A. shall secure thee of prosecuting his complaint, then thou causest that Tenement to be reseized of the Cattel, which in it were taken, That the Tenement with the Cattell to be in

peace

peace nntill Saturday, in eight dayes after Saint *Michaell*, or unto Saturday next after the Morrow of *All Soules* next comming, *&c.* And in the meane time then cause twelve free and lawfull men of that Visenage to see that Tenement, and imbreviate their names, and so summon them by good Summoners, that they be before us at *Westminster* (if in the upper Bench) or before our Justices at *Westminster* (if in the Common Bench) at the aforesaid time ready to make Recognition, and put by Sureties and sure pledges, the aforesaid B. or his Baile, if he cannot be found, that he be there to hear that Recognition; and that thou have there the Summoner, the names of the Pledges and this Writ.

If the Writ be brought before the Justices of assize, then the alteration is thus,

The Writ is all one with the former, till after the word (Peace) and then you say, untill the next Assizes, when our Justices shall come into those parts.

If the Writ of Assize be brought before other Justices then the Justices of Assize in the same County, then the Writ is as above, untill you come to the word (Peace) and then you say, untill a certaine day, which our beloved and faithfull *R.* and *F.* shall make known unto you, *&c.* and in the meane time, *&c.* That thou summon them before the aforesaid *R. F.* and those whom we have associated unto them, at a certaine place which the said R. and F. shall make known unto thee, ready thereupon to make recognition, *&c.* And put *&c.*

Upon this Writ here ought to be a speciall Patent directed to the same Justices, for that they are not Justices of Assize for that County.

If a man have Rent-service, Rent-charge, or a Rent-seek, issuing out of Land for terme of life, or

in

in Fee-taile, or Fee-simple, if he be disseised of this Rent, he shall have a Writ of Assise of this Rent, and the Writ shall be generall, That unjustly, *&c.* he did disseise him of his Free-hold in N. and he shall make his Title to the Rent, *&c.* When hee declares, *&c.*

A man may have an Assise of divers Rents, or of Land and Rent and Offices, and Profits, to be taken in a mans Soile, and all in one Writ.

If a man have any profit granted unto him out of any Land for Term of life, or in Fee, as to have the Fruites, whether Apples, Pears, Nuts or Achorns, or other profit whatsoever, he may have an Assise of them, if he be deforced of them.

So likewise of a Toll of a Market, of a passage or Ferry, of *Pontage* or *Pannage*, and other like things, he may have this Writ of Assise.

What Seizin is sufficient to have an Assize.

SEisin of parcell of the Rent is sufficient to have Assise of all the Rent.

The Provost or Warden of a Colledge shall have an Assise for Rent, where his Predecessor was seised, and not he himselfe; for the Seisin of the Predecessor is the Seisin of the House. The same case of the Warden of an Hospitall.

If a man which hath a Title to enter, set his foot upon the Land, and is ouſted, that is a sufficient Seisin to have an Assise.

If one put in his beasts to use my Common by my Commandment, that is a sufficient Seisin for me to have an Assise.

Using

Using of Common by Tenant at will is sufficient Seisin for him in the Reversion to have an Assise of Common, if he or his Tenant at will be disturbed.

Reversion was granted to *J. S.* and the Tenant for life attorns and dies, and *J. S.* enters by the Windowes (for that he cannot enter by the Door) when one half of his body was in, he was pulled out, and yet that is a sufficient Seisin to have an Assise.

The Processes in this Action are Summons, Attachment, and distresse.

Where you are to declare, you may, in case it be for Common of Pasture, make the insuing your president.

Westmerland.

THe Assise comes to recognise, whether T. W. Knight, unjustly and without Judgement, have disseised *Henry* Earle of *Cumberland* of his Common of Pasture in R. which pertaines to his Free-hold in R. within thirty years now last past, *&c.* And whereupon the said Earle by H. D. his Attorney complains, that the aforesaid T. W. hath disseised him of his Common of Pasture, to wit, for comming every year all times of the year, in five hundred acres of Pasture with the Appurtenances in R. aforesaid with all Horses, Oxen, Cows, Sheep, Swine, and other Cattell in his mannor of R. in the County of W. Levant or couchant, which pertaine to his Free-hold in R. that is to say, to his Mannor aforesaid.

And for the title of the common Pasture aforesaid, and the Assise aforesaid thereupon to be had, the said Earle saith, that one H. lately Earle of *Cumberland*, and Father of him the said now Earle, whose Heir he is, was seised of the Mannor aforesaid with the Appurtenances in his Demesne as of Fee, and that

that he the ſaid late Earle, and all they whoſe Eſtate the ſaid late Earle in that Mannor with the appurtenances had for the time, whereof the contrary is not extant to the memory of man, have had and have been accuſtomed to uſe, and have for themſelves, and their Tenants for Terme of life, yeares, or at will, of their Mannor aforeſaid, and of every parcell thereof common of Paſture, with all manner of Cattell aforeſaid in the Mannor aforeſaid, Levant and Couchant every yeare, all times of the yeare, on the aforeſaid five hundred Acres of Paſture, as unto the Mannor aforeſaid pertaining.

And he the ſaid late Earle of the Mannor aforeſaid with the appurtenances, being ſo ſeiſed of ſuch his Eſtate, he died thereof ſeized, after whoſe death the Mannor aforeſaid with the appurtenances, did deſcend to him the ſaid now Earle, as to the Son and Heir of the ſaid late Earle, by which he the ſaid now Earle into the Mannor aforeſaid with the appurtenances did enter, and was, and yet is thereof ſeiſed in his Demeſne as of Fee. And being ſo thereof ſeiſed, he the ſaid now Earle before the day of the iſſuing forth of the originall Writ of Aſſize aforeſaid put his Cattell, that is to ſay two Oxen and two Horſes, into the aforeſaid Mannor, Levant and Couchant, on the aforeſaid five hundred acres of Paſture to feed upon the Graſſe there then growing, uſing thereby his common aforeſaid, and the ſaid Cattell were eating the Graſſe there then growing, untill the aforeſaid *T. W.* before the day of the iſſuing forth of the aforeſaid VVrit; him the ſaid now Earle of his common of Paſture aforeſaid, unjuſtly, and without judgement he did diſſeize, as he above againſt him hath complained: And this he is able to aver, and thereupon he demands the Aſſize,

And

And the aforesaid *T. W.* by *J. P.* his Attorney comes and saith, that he hath done no injury or disseisin to the aforesaid now Earle, of the common of Pasture aforesaid, in the aforesaid five hundred acres of Pasture in view, &c. put, and in the plaint aforesaid specified; and upon this he puts himselfe upon the Assize, and the said now Earle in like manner: Therefore the Asize is to be taken thereupon between them.

There are severall Pleas specially to be pleaded in this Action, both in Bar and Abatement, which arise according to the Title on the Defendants part.

A Lease for yeares, or for life, the Reversion to the Plaintiff or a Feoffment of the Plaintiffs, with warranty, and rely upon the warranty, is a good Bar.

The Tenant may plead, that partition was made between the Plaintiff and J. S. whose Estate he hath, and it is a good Bar.

If the Plaintiff choose one to be his Tenant of all where he is not, the VVrit shall abate.

An assize is brought of Tenements in D. and S. The Tenant sayes, that all is in S. that being so, the VVrit shall abate, for he cannot abridge the whole Town, but see now by the Statute of 23. *Henry* the eighth, Chapter the third, where he may abridge.

The Plaintiff may plead *Non-tenure*, or Misnaming of the Plaintiff, but not of his Master, and conclude it, &c.

The Bayliff may plead that the Tenements are in another Town, for that is an Abatement.

The Bayliff may plead Misnaming, and Joyntenancy without Deed.

A Bayliff may plead not attached by fifteene dayes.

After adjournment upon the Plea of the Bayliff, the Tenant may plead matter which comes of later time.

The

The Tenant himselfe, after the Assize awarded, may leave his Bar, and plead the generall Issue, but he cannot plead a new bar after Issue.

If a Plea be pleaded, and the Justices die, all shall be pleaded anew; but if they be at Issue, that shall stand.

Where they are adjourned upon a Plea in abatement, and after the Writ is awarded good, he may afterwards plead in Bar.

Thus much may suffice to have spoken of Assize.

We should now come to treat of divers other actions, as *Contributione facienda, Quid Iuris clamat, Per quæ servitia, Et per quem reddit*; and divers others of those natures, and finding them to be very obsolete, and out of use, and that the Law hath provided remedies, by the foregoing actions in most of those cases, and that the proceedings thereupon (chiefly for the trying of titles) are far more expeditious, and more certaine, and with lesse trouble and danger to the Client; I think it will not be time ill spent to insert some briefe Rules, both in *Ejectione firmæ*, and some other actions before spoken of, which were then omitted, and hope though they come not in the direct places of those Titles, will be very usefull for the Attorney.

These proceedings are referred to the Title foregoing, of this Subject, Fol. 199.

OF the processe in this Action we have before spoken, and of the pleadings and proceedings upon it: but because many of them miscarry, by reason that the proceedings before processe, relating to the Lessors Entry, the making of the Lease, the entrie of the Lessee, by virtue of the Lease, the Eje-

ctors

tors Entry upon him, and his Outer and Ejectment where care is not taken, and they be not circumspect to prevent a defect in any of these, it causes much danger and prejudice to the Client, and causes no little disgrace to the Attorney. In this Action so very usefull we shall speak to these things in order,

1. The Entry of the Lessor that hath the right.
2. The Lease made by him for trial of the Title.
3. The Entry of the Lessee, by virtue of the Lease so made.
4. The Entry upon him, and his Ouster and Ejectment.

FIrst, it is to be considered what right or title the Lessor hath to enter, whether he hath any right or title to the Land or no; for if the right and title appear on the Defendants part, the Plaintiffs Action will fail.

Now a man may have a right or title to that Land whereof he hath no possession or property; as where Land is taken from a man wrongfully by Disseisin, in this case the challenge and claim of him from whom it is taken, is called a right. There is a right of Action, which is, where there is no remedy left, but an Action to recover the Land; and there is a right of Entry, when the party claiming, may for his relief either enter into the Land, or have an Action to recover it.

There is a title of Entry, which is where no wrong is done, and yet one who hath a lawfull course to enter upon the Land which another hath, but hath no Action to recover it; as where Entry is given to a man, for a Condition broken upon an Escheat, the Tenant dying without Heir.

In all which cases he must make his entry before he can bring his Action.

1. The Property and Title of Land is made, and may be gained several ways.

Either by Entry, as in case of occupation, where Land is granted to *I. S.* for another mans life, and *I. S.* dy; in this case he that first gets into possession shall have the Estate.

2. By Discent, where one hath Land of Inheritance, and dieth. not disposing of it.

3. By Escheat, where the Owner dieth seised without any Heir, which may be in case he have onely a Bastard, or because he is attained of Treason or Felony.

4. By Conveyance, and so the Property of Land is transferred, and so it is passed ten manner of ways, as follow,

Fine, Recovery, Feoffment, Grant, Lease, Bargain and Sale, Exchange, Surrender, Release, Confirmation.

A man may have Property in Land also by an Execution, as by *Elegit* or Extent.

If he ever had a right of Entry into the Land, it must be considered whether it doth continue and be not taken away, for one may have a right of Action, and no right of Entry to recover his Land; and he that will maintain this Action, must make himself a Title under the Lessor, that had a right of Entry into the Land when he made the Lease; for he that makes the Lease must have power and right of Entry at the time of the Lease made, otherwise neither the Entry nor the Lease will be good.

Now that the Entry may be good and warrantable by the Lessor; for otherwise the Action is not maintainable, take these Rules following.

1. This Entry is to be made by the party that hath right.

2.

2. It is a purpoſed going into, or ſetting his foot upon the Land, as upon his own Land.

3. This may be done by the party himſelf that hath right to enter, or by his Attorney, by a Warrant from him, or by another to his uſe; and if it be done by Attorney, he muſt have a good Authority, and ſee he do duly purſue it.

Note that one Joint-tenant, Tenant in Common, or Coparcener, having right to enter, may if he will, enter for all the reſt.

If ſuch a perſon enter generally, or for, or in the name of himſelf and the reſt; and the reſt do not afterwards diſagree to it, this is a good Entry for himſelf and the reſt; and therefore if one have Iſſue, a Son and a Daughter by one Venter, and a Son by another, and being ſeiſed of Copy-hold-land, deviſe all to the younger Son, and dy, and he enter into all, this Entry ſhall avail the eldeſt Son, to put him in poſſeſſion of the third part.

The Entry into one part may be ſufficient to gain the poſſeſſion of the reſt of the Land.

The Entry into parts muſt be in the name of all, *&c.*

If one reſtrain his own Entry, and make it ſpecial, and ſay, that it ſhall be to ſuch an acre onely whereon he puts his foot; in this caſe it reduceth the Poſſeſſion of no more but that part, *&c.*

If a Leaſe be made to *A.* and delivered to *B.* to the uſe of *A.* and *B.* enter to the uſe of *A.* and after is outed, *A.* may have this Action upon the Entry.

Having done with Entry, we come now to ſpeak of Leaſes; for it is abſolutely requiſite for the maintaining of this Action, that a good and warrantable Leaſe be ſhewed forth.

For the better enabling of you to make ſuch Leaſe, take theſe Rules following.

212 1. The Leaſe to try the Title muſt be well made, ſealed, and delivered, as other Leaſes and Deeds are done; and for that ſee the Book of common Aſſurance, chapter the fourth and fourteenth: A Book very uſefull for many conveyances, both in this and other kindes.

2. The Leaſe and Entry may be made by the party Leſſor himſelf, if he be of full age, and not a Feme covert, or by his Attorney, by a Letter of Attorney, wherein the Leſſor may ſeal and ſign the Leaſe, and ſeal and deliver the Letter of Attorney at one and the ſame time, to ſome friend of his; and in this Letter of Attorney he muſt recite the Leaſe, and give the Attorney power to enter into the Land, and there to deliver the Leaſe of the Leſſee as his Deed, and then the Attorney muſt do it in ſuch ſort, as the Leſſor himſelf ought to do it; and he muſt not deliver it till he come to the Land.

3. The Leaſe muſt be delivered upon the Land, for if the Leſſor ſeal and deliver the Leaſe, before he hath made his Entry upon the Land, it is void.

The Husband and Wife may make a Leaſe and Letter of Attorney, to enter and deliver it upon the Land, and this is good.

A Woman covert, or an Infant, cannot make a Letter of Attorney to ſeal a Leaſe, to try a Title as a man of full age may do.

The Husband alone may make a Leaſe of his Wifes Lands.

A copy-holder may make a Leaſe to try the Title for a year without Licence.

A Tenant in common may make a Leaſe to try the Title for his part, *&c.* for a year, *&c.*

The uſual Tract that is uſed in ſealing this Leaſe of Ejectment, is as follows.

Where a man hath a Title to a Houſe, Land, or both,

both, and desires to gain the possession; it is useful to make a Lease (to some friend who he is assured will not deceive his trust, but will surrender up the Lease, &c.) for two or three years or more, for so long as he may be sure the time is not expired, before he get his Trial and Judgment.

This Lease being made, he goes with such his friend the Lessee, to the Mannour or chief house, or stands within the door, or to the Land where no house is, where he seals and delivers it to his friend, and taking the Ring or any part of the Door in his hand, delivers the Lease, mentioning the house and lands with the appurtenances, which are contained in the Lease, to his said friend the Lessee.

This being done, and that you go away, whosoever after that stays in the house, or whosoever next enters into the house, whether master, servant, or stranger, is an Ejector, and is proper to be made Defendant.

In case you finde no Ejector, you may, if you so think fit, appoint one to that purpose.

The Lease being sealed and delivered to your friend as before, the party appointed to be the Ejector may go into the house, and thereby, you going away, he is become Ejector.

Where you thus appoint an Ejector, you must be sure to give notice to the Tenant of the Land, to defend the Title upon the Ejectors appearance.

Where the Tenant of the Land hath but a Lease he must give notice to the Lord in whom the Fee-simple is, that he may be ready with his Evidences, &c. to defend the Title.

Note, that if you cannot come into the house, you may deliver the Lease upon the Lands, in the name of the House and Lands contained in the Lease; and he that comes next after your going away upon the Land, is an Ejector.

Where it cannot be proved that the Leſſee after the Leaſe made, did enter and was poſſeſſed, this Action will not be maintainable, and therefore we muſt now ſay ſomething of the Entry of the Leſſee.

1. He muſt make ſuch an Entry as to gain the Poſſeſſion, for he cannot be ejected out of the Poſſeſſion of that wherein by Law he was never in.

2. His Poſſeſſion muſt continue, for if upon Sealing of the Leaſe, and the Delivery of it to the Leſſee upon the Premiſſes, the Leſſor leave him upon the Houſe or Land, and that he be outed, or come away, *&c.* and another enter; whether it be a continuance of the ſame Tenant in Poſſeſſion, or the Entry of a Stranger; here his Poſſeſſion is diſcontinued, and any of thoſe parties are Ejectors. For the Ejectors take this

The Entry of a man upon the Land after the Leaſe ſealed, or the putting in the beaſt upon the Land, in the like caſe is an Ejectmement.

The continuance of the ſame Tenant in Poſſeſſion, that was in at the time of the ſealing of the Leaſe, is an Ejection, and the Tenant an Ejector.

Where a Leaſe is made to try the Title, and the Servants of the former Poſſeſſour enter with their Maſters Carts to do their utmoſt, and the Action is brought againſt the Maſter; it is maintainable without proof of the Maſters commandment for this Entry.

In ſome caſes this Writ lies, and not in others.

It lies of a Mannour Houſe, Land, Meadow, Paſture, Tith, or ſuch like things.

It lies of an Orchard, It lieth of a Kitchin, It lieth of a Chamber, It lieth alſo of a Coal-mine, It lieth alſo of a Battery.

It lieth not upon a Leaſe of a Stock of Cattle,

nor

nor upon a Leaſe of a Sum of Money, nor of a water-courſe.

The Writ muſt ſet forth the certainty of the thing both for quantity and quality, as ſo many Meſſuages, ſo many Cottages, ſo many Acres of Land, ſo many Acres of Meadow, ſo many Acres of Paſture, *&c.*

Thus much for *Ejectione firme*, before omitted.

In Actions of Account take theſe Obſervations following.

NOw where a Bailiff doth make a Deputy, yet the Writ muſt be againſt the Bailiff himſelf.

If a Stranger take the Profit of my Wives Land during Marriage, and I dy; my Executor, and not my Wife ſhall have this Action.

This Action lies againſt the Husband for the receit of his Wife; and againſt the Wife and Husband for the receit of the Wife, whileſt ſhe was ſole.

It lies againſt a Body politick, as againſt a ſingle man.

It lies againſt the Keeper of a Park, that hath the charge of Deer, as Bailiff of his Park, *&c.*

An Action of Account lies not in theſe caſes following.

1. Where the party to be ſued claimeth the thing to his own uſe.

2. Where there is no privity between the parties, neither *Ex proviſione Legis*, called privity in Law, as in the caſe of a Guardian, nor in Deed by the conſent of the party; as when Goods are delivered to a Stranger, and not to my uſe, nor to be delivered over to more, there is no agreement between the parties.

3. When he that hath delivered the things hath taken an Obligation for ſecurity of the things delivered.

216 4. Where the party that hath the things, hath a bare overſight of them, as a Bailiff of a Plough, a Shepherd of Sheep, *&c.*

A Bailiff ſhall have allowance upon his Accounts, but a Receiver ſhall have none.

If the Bailiff diſburſe any thing for his Maſter belonging to his Office, as to pay his Quit-rent, or the like; or if he be robbed, or ſuffer loſs by other means without any default in him, it ſhall be allowed him upon his account. But if he pay his Maſters Debts, or lay out any thing elſe, not appertaining to his Office, this will not be allowed him.

There are two Judgments upon this Writ, the firſt is, (*Quod computet*) which is interlocutory: the laſt is, *Quod querens recuperet verſus Defendentem*, ſo much as he is found in Arrearages, and *Damna occaſione interplacitationis.*

The firſt is to account onely, and upon this the Defendant may be outlawed, and then before Outlary if he appear and enter into account, and be found in Arrearages, the Plaintiff ſhall have a definitive Judgment for the Arrearages, and after the firſt Judgment no abatement can be for any cauſe, but a diſcontinuance, or Non-ſuit may be.

The firſt Judgment is but an Award of the Court, like to a Writ of Inquiry of Damages, and not like to a final Judgment, for there the Action is clearly determined, and theſe two Judgments depend one upon another, for if Judgment be to account, and the Plaintiff dy before he hath accounted, the Executour cannot go on in that Suit, but he muſt begin again, and no Writ of Errour will be upon the firſt, till after the ſecond Judgment.

We have now gone through the moſt general and uſefull practice of the Common Bench, relating to the ſeveral Actions before going; as alſo of all Offices,

ees, and Officers incident to that Court, and now as before we promiſed, hereto is added a Table of the Fees of that Court, of all Offices whatſoever relating to the Court, or the practice of it, belonging to every Office or Officer, which follow in order.

The Fees hereunder mentioned are the Fees due, and paid to the Lord Chief Juſtice, and the other Juſtices of the Court of Common Pleas at Weſtminſter, *as they were due, and uſually paid to the Juſtices of the ſame Court.*

The Lord Chief Juſtice his Fees.

Writ of Errour.

FOr allowance of a Writ of Errour upon an Outlawry before Judgment, 20 s.

For a Bail taken upon an Outlawry upon mean Proceſs in Debt, if the Debt be 20 l. or above, 2 s. 4 d.

For the allowance of a Writ of Errour upon a Judgment, 20 s.

For Bail taken in caſe of Debt, after Judgment, 12 s.

For the allowance of a Writ of Errour upon a Judgment upon a *Scire fac.* and Outlawry after Judgment 35 s.

Making the Roll.

For making the Roll that a Writ of Errour is allowed on, 2 s.

Superſedeas.

For a *Superſedeas.* . 3 s.

Tranſcript.

For the tranſcript of a Record, being a preſs, 6 s. 8 d.

For

For every preſs more, 6 s. 8 d.

Certiorari. For the Return of every *Certiorari*, 14 s. 9 d.

Seal Niſi prius. For the Seal of every Record of *Niſi prius*, 2 s. 1 d.

Sealing of writs and Exemplif. For the Seal of every Writ ſealed in Court, 1 d.

Fines. For the Seal of every Expemplification, 2 d.

The Fees following are due to ſuch of the Judges who do perform the buſineß.

For acknowledgment of a Fine or Warrant of Attorney for a common Recovery out of Court, 6 s. 8 d.

Sign [illegible]. For ſigning every Writ of Privilege to remove any cauſe, *Habeas corpus*, *Procedendo*, or *Superſedeas*, upon a *Procedendo*, 4 s.

Bails. For every Bail taken out of Court upon any ſuch Writ of Privilege, wherein one cauſe onely is returned, 9 s. 8 d.

For every cauſe more, 2 s.

Confeſſions. For the confeſſion of a Judgment out of court 9 s. 8 d.

Bails. For every Phillizers Bail, and other Bail taken out of court, 9 s. 8 d.

Satisfaction. For acknowledging ſatisfaction out of court, 9 s. 8 d.

Deeds acknow. For acknowledging out of court a Deed to be inrolled 9 s. 8 d.

Guardians: For admiſſion of a Guardian out of court, 9 s. 8 d.

Suggeſtion. For the proof of a luggeſtion out of court

Court, for every witneſs, 9 s. 8 d.

For a Warrant for paſſing of a Fine, where there are more than three Cognizors or three Cognizees, parties to the Fine, 4 s. *Warrant for Fines.*

For every *Affidavit* taken out of Court upon a forreign Plea, or Reſcous, 2 s. Affidavit.

For any other *Affidavit* taken out of Court, 8 d.

For exhibiting of any Information out of Court, 8 d. *Informations.*

For ſigning a Bill of coſts to award an Attachment for not appearing upon a *Sub pœna*, 8 d.

For granting a Licence to compound upon a penal Law, 2 s.

For aſſeſſing of the Kings part of a Forfeiture upon a penal Statute after compoſition with the Informer, 2 s.

For the Commitment out of Court of a Priſoner to the *Fleet*, charged with one cauſe onely, 9 s. 8 d. *Commitments.*

For every Bail taken out of Court upon an Outlary in Debt upon mean Proceſs reverſed, if the ſame be twenty pounds, 2 s. 4 d. *Bails on Outlaries.*

Divident

Divident Fees.

Fees in Court. to the Box.

These Fees following are due to the Lord Chief Justice, and the other Judges of the Court of Common Pleas, by way of Divident.

Judgment. For confessing of a Judgment in Court, 6 d.

Satisfaction. For acknowledging satisfaction in Court, if the Debt or Damage do not amount unto 100 l. 6 d.

If the Debt or Damage do amount to 100 l. 12 d. and for every 100 l. after the same rate, 12 d.

Guardian. For admitting an Infant in Court to his Guardian, 12 d.

Writ. For reversing an Outlary in Court for Errour in the Exigent, or Retourn, 12 d.

For the like for the insufficiency of the Proclamation or Retourn, or for want of a Proclamation, 2 s.

Recovery. For every common Recovery acknowledged in Court, 6 d.

Fines. For a Fine acknowledged in Court, 6 d.

Bails. Recognizance. For a Bail taken in Court, or a Bail or Recognizance acknowledged in Court, 12 d.

Deeds. For a Deed acknowledged in Court to be inrolled, 12 d.

Discontinuance For a Discontinuance, 12 d.

Prohibition. For a Prohibition granted, 9 s. 8 d.

For

For every wager of Law, or Non-ſuit upon a wager of Law, 6 d. *Wagers of Law.*

For admiſſion of an Attorney to be an Attorney of this court, 20 s. *Attorn ſworn.*

The Puiſne Judges Fees.

FOr every Fine drawn at Bar, 12 d. *Fines.*

For a Recovery drawn at the Bar with a ſingle Voucher, 18 d. *Recoveries.*

For every Voucher more, 6 d.

For Reverſal of an Outlary in court, 4 s. *Reverſals.*

For taking a privy Verdict, 6 s. 8 d. *Privy Verdict.*

For taking of coſts upon every Verdict, 12 d. *Coſts of Verdict.*

From the Clerk of the Warrants every Term, to every of the Puiſne Judges, 33 s. *Feod. annuale. Clericus Warr.*

For every Attorney whoſe name is recorded in the Roll of Attorneys, every Term, 4 d. *Rec. Att.*

For inrolling and examining the parts of a Fine, and Writs upon common Recoveries by the Statute, 23 *Eliz.* 6 s. *Inrolling Fines and Recoveries.*

For the exemplification and examination of the parts of a Fine, and Writs upon common Recoveries by that Statute, 5 s. *Exemplification thereof.*

For drawing and entring a Rule for an amendment upon that Stat. 12 d. *Rules for amendments.*

For a ſearch made upon the Inrolment upon that Statute, 4 d. *Searches.*

For a copy of a Fine, or Writs inrolled *Copies.*

rolled upon common Recoveries inrolled by that Statute for every ſheet, 4 d.

Return of Writs of Covenant and Entries.

For the Return of every Writ of Covenant brought to levy a Fine upon, 10 d.

For the Return of every Writ of Entry to ſuffer a common Recovery, every Writ of Summons and Seiſin thereupon, 10 d.

Signing Dedimus poteſtatem.

An ancient Fee of 6 s. 8 d. for ſigning of a *Dedimus poteſtatem*, due to the Judges of any Court who do aſſign the ſame which is now, and of late hath been divided amongſt all the Judges that ride the Circuits.

Theſe Fees following are due to the Clerks of the Lord Chief Juſtice, and other the Juſtices of the ſaid Court.

Fines.

TO the Judges Clerk of the Fines, For taking of a Fine, or Warrant of Attorney, 3 s. 4 d.

Warrants of Attornies.

For certifying of a Fine, or Return of a *Dedimus poteſtatem*, 16 d.

Bails.

To the Judges Clerk of Bails, for taking every Bail, 12 d.

Caveat.

For entring every Caveat to give notice that good Bail may be taken, 12 d.

Satisfaction.

For ſatisfaction acknowledged out of Court, 12 d.

Deeds acknowledged.

For a Deed acknowledged out of Court to be inrolled, 12 d.

Suggeſtion.

For the proof of a ſuggeſtion out of Court for every witneſs, 12 d.

Affidavits.

For an *Affidavit* taken out of Court, 4 d. For

For entring into his Book an Information exhibited out of Court, 4 d. *Information.*

For entring into his Book of Costs a Warrant signed to award an Attachment for not appearing upon a *Subpœna*, 4 d.

For Admission to a Guardian, 12 d. *Guardian.*

For entring into his Book a Licence to compound upon a penal Law, 4 d. *Licences.*

For entring into his Book the Kings part of the Forfeiture upon a penal Law assessed by the Judges, after composition with the Informer, 6 d.

For entring into his Book a Commitment out of Court of a Prisoner to the *Fleet*, charged with one cause onely, 12 d. *Commitment.*

To the puisne Judges Clerk of the Inrolments, for Copying, Enrolling, and Examining the parts of a Fine and Writs upon a Recovery, by the Statute, 23 *Eliz.* 8 s. 4 d. *Inrolment. Fines and Recoveries, &c.*

For a Search made for an Inrolment upon that Statute, 8 d.

For writing a Fine, or Writs inrolled upon a common Recovery inrolled by that Statute. 8 d.

The

The *Custos Brevium*, who is the prime and first Officer of the Court, his Fees.

These Fees following are the Fees which are taken by the Custos Brevium, *of his Majesties Court of Common Pleas, and his Clerks in right of his said Office, and as they were taken* 11 Eliz. *by the then Master of the said Office, and his Clerks.*

Pt. diem. IN *primis*, for filing any Writ, or other Record, coming after the day of the return thereof, except Writs of Privilege *de veniendo, & redeundo*, and also Writs of Privilege, called *Prop.* or *post diem*. 4 d.

Pt. Term. *Item*, For filing any Writ, or other Record (except before excepted) coming after the Term wherein it was returnable, called a *Post Term*. 20 d.

Item, For filing any Writ, or other Record coming after two Terms, called *Post Term*. for every Term after 20 d. a piece; except *Exigents* and Outlawries, which pay but onely 20 d.

Item, To the Clerk of the same Office (*ab antiquo*) who enters the same, 2 d.

Item, Upon the making of the Star. 4 H. 7. *cap.* 24. the *Custos Brevium* was allowed

allowed by the Court, for carrying and re-carrying of every fine levied according to that Statute, to *Westminster*, to the Chirographer to proclame, four Terms, 8 d.

Item, for keeping three parts of the Record of every fine, consisting of five parts, 4 d. a piece, 12 d.

In tot. for every fine 3 s. 6 d. whereof the Master hath 2 s. 6 d. and 14 d. is allowed to the clerks 3 s. 8 d.

Item, for the amendment of every Writ or other Record *per warrant. cur.* 20 d. *Amendments.*

Item, for every *Non est factum* pleaded in court, 2 s. *Non est fact.*

Item, for every Sheriffs bundle of Writs returnable of the precedent Term, and coming before Essoyn-day of the second Return of the new Term, 8 d. *Sheriffs bundle.*

The usual Fees allowed by the Custos Brevium *to the Clerks of his Office.*

Inprimis, for every Temple-search, 4 d. *Searches.*

Item, out of every *Westminster* search, 2 s. 1 d.

Item, To the clerks out of the allowance of every *Certiorari* 2 s. 8 d. and for certifying the same, *secundum longitudinem*, and according to reason, 2 s. 8 d. *Certiorari.*

Item, to the clerk for writing and examining of every exemplification, *Exemplificat.*

secundum longitudinem.

Porta. Bre. in Cur. *Item*, To the Clerk for any Writ or other Record carried into the Court, 4 d.

Bre de Ingrum. & seia Fines. *Item*, For entring a common Recovery-writ *super disseisinem in le post*, 8 d.

Item, For every Fine passing in the Office, 14 d.

Ne recipiatur. *Item*, For entring into a Book every *Recipiatur* coming under a Judges hand or by Order of Court, 12 d.

Nota fur. *Item*, For every note of Jurors names for the Clerk of the Juries to make further Process by, 4 d.

Capia & sa. *Item*, For every Note of an *Exigent* for the Clerk of the Outlawris to make further Process by, 8 d.

Searches. *Item*, For the search of any Book of Entries of any Writs for every Term, 8 d.

Copies. *Item*, For the Copy of any Writ or other Record, for every sheet, 8 d.

The usual Fees allowed by the Custos Brevium, *to the Bag bearer of the Office, being always the common Voucher of the Court.*

Searches. *Inprimis*, For every search under five years, 1 d.

Item, For every Temple search, 5 d.

For every *Westm.* search, 12 d.

Porta. Bre. in Cur. For any Writ or other Record carried into the Court, 5 d.

Recupat. For every common Recovery suffered in Court (being the common Vouchee

chee) 4 d. a piece, 4 d.

For every Attorney ſworn in Court, *Attorn. Jur.* 6 d.

The Fees of the Clerk of the Involments of Warrants, and Eſtreats, in the Common Pleas, as are now and have been taken theſe two and thirty years, and as I conceive were taken ever ſince 31 Eliz. *ſaving the Fees hereafter mentioned, allowed* per ordin. Cur.

EVery Inrolment containing a ſide of a Roll, 5 s. *Involments.*

For a full Roll, 10 s.

And ſo according to the rate.

Every Warrant of Attorney *in debt, tranſg. & detinue,* 4 d. *War. Attorn.*

The Sheriffs Warrants, 12 d.

Every other Warrant, called Double Warrants. 8 d.

For a *Poſt Term.* 4 d.

The Lord Mayor of *London* his Warrant, 5 s. 8 d.

The Secondaries of the Compters in *Eaſter* Term yearly, 13 s. 4 d.

For entring of an Attornies name in the Roll of Attorneys, upon his firſt admittance, 3 s. 4 d. *Attorn. Jur.*

For a Warrant upon a Writ of Covenant, *per ordin. Cur.* 4 d. *War. ſur. fine.*

Paid to the Clerk by every Attorney four pence a Term, called the Roll groat, which is paid to the Judges Box, and I conceive it to be due ever ſince, *Rot. Attorn.*

11 *Eliz.* 4 d.

Recuperat. Paid also to the Clerk by the Prothonotaries 12 d. upon every Recovery which is also paid to the Judges, 12 d.

Attorn. Jur. To the Clerk when an Attorney is first sworn. 12 d.

The Chirographers Fees.

Fines. IN*primis*, the ancient Fee limited by Statute 11 *Eliz.* for every Fine, 4 s.

Item, From 4 *H.*7. for the service in proclaiming Fines, 8 d.

Item, By Stat. 23 *Eliz.* for writing the Roll, 4 d.

So the Chirographers fee for every fine is, 5 s.

Other Fees also due, and anciently paid to the Chirographers, viz.

Exemplificat. FOr exemplifying a fine the Term in which it was ingrossed, 2 s. 8 d.

Copy. For every sheet of every fine, of twelve lines copied out of the Record, 12 d.

For the sight of every Record being ancient, from *H.*8. upwards, 3 s. 4 d.

Searches. For the search of every fine from *H.*8. to this present, for every year, 8 d.

For the search of every fine during the

the Reign of *H.* 8. for every year, 12 d.

For certifying of every Record by a Writ of Errour, 12 s. *Certiorari.*

For a *Quid juris clamat quem reddidit, reddit & per quæ servit.* 6 s. *Quid jur clam. &c.*

For entring a claim upon a Record, 5 s. *Claims.*

For allowing of Proclamations upon Fines brought into the Office after the Term ended, 6 d. *Pt. Fines.*

For the *Post Termin.* of a Fine, 12 d. *Pt. Term.*

The Chirographers Clerks Fees for ingrossing of Fines by the Attorney which sues them out.

THe Chirographers Clerks have received an allowance of the Attorneys for their pains for them, which heretofore have been more advantageous unto them than now it is, being reduced to 2 s. 6 d. in certain, had, and made at the request of 100. or 80. of the most ancient Attorneys, with *John Newer*, Esq: Clerk of the said Office, in 2. or 3. of King *James*: To which agreement had and made in writing, the said Attorneys set to their hands, and the same was delivered to Sir *Edward Cook* Knight, then Chief Justice of the Common Pleas, and hath so continued ever since, 2 s. 6 d. *Fines ingr.*

For this allowance the Clerks do write more than all the Officers through which Fines do pass, *viz.* They write every Fine long, or short, four times o-

ver in a great set hand.

Fees belonging to the Clerk of the Treasury.

Copy. FOr the copy of every Issue and Imparlance, for every sheet, 4 d.
For every Judgment, Deed enrolled, and real Action, for every sheet, 8 d.

Searches. For the search of every Term above ten years, 4 s.

Exemplification. For every exemplification not exceeding three sheets, 7 s.
For every sheet more, 12 d.

Records of Nisi prius. For every Record of *Nisi prius*, not exceeding three sheets, 2 s.
For every sheet more, 4 d.

Fees for the Keeper of the Treasury from 12 Eliz.

Searches. INprimis, for search of a Term above ten years, 8 d.
For seven years under ten years, 4 d.
For three years, 0

Portam Rot. For search of a Plea-roll, 4 d.
Ligam Rot. For a Roll carried into the Court, 6 d.
For making up a Term & Record, 3 s.

Attorn. jur. For every Attorney sworn in Court, 12 s.

Jur. at Bar. For a Jury at Bar, 5 s.
Nisi prius Mid. For a *Nisi prius*, in Mid. 2 s.
Wager deleg. For a Wager in Law, 5 d.

For

For a Copy of a *Precipe*, after the Term, 18 d. 2 31

For a Fine acknowledged in the Treasury, 4 d. *Copy per fines.*

For a Warrant of Attorney left unentred, and comes to be entred in the Roll after the Term, 4 d.

For an Entry left out of the Kings Silver, and comes to be entred in the Office, 4 d. *Intra. pl. Term.*

From the Clerk of the Treasury for my attendance every Term, 5 s. *Feod. annuale.*

For my Key after the Term, 18 d. *Claves Thes.*

The Fees of the Clerk of the Kings Silver, as they were taken in the eleventh year of Queen Elizabeth, *in the sixteenth year of King* James, *and in the late Kings time, and since.*

IN *primis*, for the Fees of every ordinary Fine taken by the Lord Chief Justice of the Common Pleas, or any Judg of Assize in the Western circuit, together with the Copy, or *Post fine*, eighteen pence, for every Fine taken in the same Circuit by special Commission, and for the Copy of the *Post fine*, 22 d. *Fines in the Western Circuit.* *Fines by special Deed.*

For every ordinary Fine elsewhere in *England*, and *Monmouthshire*, taken as aforesaid without Commission, and for the Copy, 10 d. *Ordinary fines.*

Western. For every Fine taken by special Commission out of the Western circuit, and for the copy, 1 s. 4 d.

Severalis capti. For every several caption in any Fine where it is taken at several times by special Commission, over and above the former rates, 4 d.

Certiorari. For every Fine certified by *Certiorari* after the death of any Judg, or other Commissioners, over and above the former rates, 6 d.

Pt. Term. For the *Post Termin.* of every Fine brought in the next vacation after return of the Writ of Covenant, 6 d.

Searches. For every search of any Fine every Term, 4 d.

Copia. For every copy of the Entry of the Kings Silver, 8 d.

Ne recipiatur. For every Fee of a *Ne recipiatur*, of any Fine either by Order, or Warrant, of the Court, or any Judg, 3 s. 4 d.

For the continuing of any such Order or Warrant from Term to Term till it be dissolved, 3 s. 4 d.

The Philizers Fees.

Cap. al. & plur. IN primis, For every *Cap. Al. & Plur. Cap. in Debt, Detinue*, and *Trespass*, not having more than four names in a Writ, and Entry thereof, 6 d.

Delivery of Record of the Cap. *Item*, for delivery of every first *Cap.* upon Record and Entry thereof, 4 d.

Testat. For every *Testat.* upon any of the said

Pone sum. Writs, *Pon. in Replevin & Summons*, 12 d.

Item,

Item, For every *Cap. Al. & Plur. Bria. in com.* In Accompt, Covenant, Annuity *Ejectione firme*, and upon penal Statute, 12 d.

Item, For every Writ in an Action upon the caſe or more, according to the length, 12 d. *Actions ſuper caſum.*

For every return *Habend.* and ſecond deliverance, and Entry thereof, 2 s. 6 d. *Return Habend*

For every *Non omit. & cap.* in *Withernam*, 2 s. *Non omit. Withernam.*

For every Writ of Partition, *Warrant Charte*, *Quare impedit*, and waſte, 12 d. *Partition, waſt. Quare impedit. War. Cart.*

For every Writ of inquiry of damages in real Actions, *Scire fac. & Superſedeas*, 2 s. *Inqui. de dam. Scire fac. ſuperſedeas. ſeu. Gr. & pet.*

For every *grand cap. Al. Sum. pet. cap.* and Entry thereof, 2 s. 6 d. *cap. Copia in de.*

For the copy of the Entry thereof, 8 d.

For the demand in every Writ of View and Entry thereof, 2 s. 6 d. *View.*

For every Writ of Seiſin and Entry thereof, 4 s. 6 d. *Seizin.*

For the view prayer, 2 s.

For a copy of the Entry thereof, 8 d.

For every Writ of *Habeas corpus, duc. coram, diſtring. nuper vicec. & diſtring. bullivum*, 2 s. *Habeas corp. & diſtring.*

For every Writ of Reſcous and Entry thereof, 2 s. *Adjournment. cont. reſort.*

For the Entry of every Adjournment, Diſcontinuance, and Reſort, 4 d. *Reſcous.*

For every ſpecial Bail, and the Entry there- *Special Bail.*

thereof, 2 s. 10 d.

For every Appearance in real and mixt Actions, 4 d.

Appearance. For every Appearance upon Writs to arrest, and Entry thereof, 12 d.

Searches, rules, copies, number-roles. For searches, copies, number-rolls, and giving of rules, each of them, 4 d.

Exigenters Fees.

Fees. Exigenters. EVer since the Statute of *Henry* the eighth, which gave the Proclamation upon the *Exigent*, the whole Estate of the Exigenters Office did consist in the making of three Writs, *Videlicet*, an *Exigent*, a *Supersedeas*, and a Proclamation, all which Writs are warranted by one and the same Record.

For all the time of our remembrance and experience in the said Court, which hath been (by the most ancient of us) for about thirty years or thereabout, the Fees of the said Writs were as followeth, *videlicet*,

The *Supersedeas*,	2 s.
The *Exigent*,	11 d.
The Proclamation,	6 d.

Which Fee of 6 d. was given by the Statute of *6 Henry* the eighth, being now about an hundred and ten years since.

About eight or nine years since the *Supersedeas* (*quia improvid.*) being the least

leaſt Writ in labour, and more in profit than both the other, was granted by Letters Patents under the great Seal of *England*, by the late King of famous memory, to Mr. *John Murray*, then of his Majeſties Bed-chamber, and partly to avoid conteſtation with his ſaid Majeſties grant, and upon hopes and promiſes of ſome recompence other way, the Exigenters did give way to the ſaid Patent, and have ever ſince loſt the benefit of the ſaid *Superſedeas*, whereupon the Judges did give increaſe onely of one penny to be taken upon the *Exigent*, for relief of the Exigenters, and their Clerks, and ſo the *Exigent* was made twelve pence, which increaſe of a penny is all the recompence which hitherto they have received for that great loſs of the *Superſedeas*.

We have likewiſe heard, that above fourty years ſince, and before our times by occaſion of an Act of Parliament, made 21 *Eliz.* whereby the Proclamation of the *Exigent* was much enlarged without any addition or increaſe of Fee, there was one penny added to the *Exigent*, to be given to the poor Clerks for writing the ſaid Writs, over and above the ancient allowance, which penny hath ever ſince been paid to the ſaid poor Clerks accordingly, without any benefit to the Maſters themſelves.

Other increaſe, addition, or alteration of Fees in our Offices we know not

of

of, nor ever heard of, although the length of the ſaid *Exigent*, or Proclamation with their Entries conſidering the loſs of the *Superſedeas*, (all which we humbly ſubmit to his Majeſties Commiſſioners) might perhaps have juſtly deſerved ſome further improvement. And it is certainly true, that no other increaſe of Fees hath been in our Officers ſince 11 *Eliz.* nor for ought we ever heard, or can by any means conjecture for theſe hundred years at the leaſt.

HILAR. TERTIO
CAROLI
Regis.

The Clerks of the Jurors.

A note of all ſuch Fees as are now uſually taken by the Clerks of the Jurors of his Majeſties Court of Common Pleas at Weſtminſter, *being the ſame, and no other than ſuch as have been taken time out of minde.*

Habeas corpus. IN*primis*, For a Writ of *Habeas corpus Jurator.* in Debt and Treſpaſs, 10 d.
For the like Writ in all other Actions, 16 d.

Diſtring. For a *Diſtringas cum decem Tales*, 2 s. 4 d.

Search copy. For a Terms ſearch, the copy of a Jury

Jury, a number-roll, and a diſcontinuance and adjournment for every of them, 4 d. *Court adjourn.*

The Clerk of the Eſſoyns.

INprimis, for every Eſſoyn and Exception, 4 d. *Eſſoyn except.*
For the Copy, 4 d.
For every Adjournment, 4 d.
For the Copy, 2 d. *Copia.*
For every *Idem dies*, 4 d.
For every Non-ſuit for want of Adjournment in Actions perſonal, 2 s. 4 d. *Adjournment.*
For the copy, 12 d. *Cepies.*
For every Non-ſuit in Actions real, 4 s. 4 d. *Idem dies.* *Non pros.*
For the Copy, 12 d.
For the exemplification of every Eſſoyn and Non-ſuit thereupon when it ſhall happen, being very ſeldom, 7 s. 6 d. *Exemplificat.*
For the copy thereof, 3 s. 4 d.
For the Clerk, 12 d.
For ſeveral fees from ſeveral Officers of the Court towards the numbering and marking of the Rolls, 41. 9 s. *Feod. annale.*

Outlawry

Outlawry Office.

In the Kings Attorney General his Office of the Outlawries executed by his Deputy Mr: Johnson, the Fees are as followeth, viz.

Cap. utl. special. FOr a special *Cap. utlegat.* against Body, Lands, and Goods, 2 s. 4 d.
For a *Proprium*, 14 d.

Habeas Corpus duces tecum. For every Writ of *Hab. Corp. & duces tecum*, when they are sued forth, 2 s. 4 d.
If a Proper. 14 d.

Cap. utlegat. general. Certif. utl. in lect. For a general *Cap. utlegat.* 10 d.
If a Proper. 6 d.
For ingrossing and certifying a special Writ, with the inquisition returned by the Sheriff, of Lands, or Goods found thereupon, and for the *Exigent*, with the Return thereof at large certified into the Exchequer, when it is required, the Office-fee is eight shillings, unless it be commanded by the Lord Treasurer, Chancellour, or Barons of the Exchequer, or by the Kings Attorney General, or Solicitor for his Majesties service onely, then no Fees are due, 8 s. *aut nil.*

Certific. Reversal in secium. For ingrossing and certifying a Reversal into the Exchequer to discharge seizure upon Outlawries, when any is, 5 s.

Exon libri de utl. And to the Clerk, 4 d.
For entring the Reversal in the Outlawry

lawry Office to discharge all Process thereupon, or upon any Writ of Errour, 2 s. 8 d.

For certifying of an Outlawry, or Reversal when it is pleaded, 2 s. *Certific. nulla. vel Reversal.*

And to the Clerk, 4 d.

For the search of an Outlawry one Term (as in all other Offices) 4 d. if above a year, then 3 d. a Term, which is the utmost, 3 d. *Search.*

For entring and filing an *Exigent*, with one Process thereupon, 4 d. *Filacea exsa.*

These several Fees aforesaid were paid and received in Easter *Term* 34 Eliz. *and ever since to mine own knowledg, for so long I have been and continued Clerk, and to all Attornies General that have been since that time.*

These (as I understand) are the true Fees.

The Fees of the Seal for Writs.

ALL Writs for the Kings Bench, and Common-pleas, 7 d. *Seals of Writs.*

The exemplification of the Kings Bench, 2 s. 6 d. *Exemplific.*

The exemplication of the Common-pleas, 2 s. 2 d.

Outlawries, 1 d.

Propr. 1 d.

Fees

Fees due to the Marſhal, and Proclamator of the Court of Common Pleas, given by Order made by all the Judges of the Court, Term. Trin. 31. H. 8. poſt conqueſtum, *and received accordingly by the ſaid Marſhal and Proclamator, for any thing appeareth to the contrary, untill* 11 Eliz. *and ever ſince.*

Judgments. *Fines.*

Inprimis, for every Judgment and Nonſuit, 4 d.
Item, for every fine, 8 d.
Item, for every final Judgment, 12 d.

Chief Uſher of the Exchequer, and Marſhal and Proclamator of the ſaid Court of Common Pleas by Leaſe from *Clement Walker* Eſq: who hath the ſame Office in inheritance by grand Serjeanty.

The four Criers.

HEreafter do enſue the good Ordinances and Rules made as well by the Kings Juſtices of the Common Pleas in times paſt, as by the Juſtices now being, for the good Rule and Order of the ſaid Court, which ſame now Juſtices do charge and command every of the ſaid Officers and Attornies well and truly to obſerve and keep upon the pains therein limited.

Which

Which ſaid Orders were inrolled *Termin. Trin. 35 H. 1. poſt conqueſtum Rot.* 494. *Jo: Prieſt* chief Juſtice of the Common Pleas, *Ni Auſten, Pet: Arder, Ro: Davers, Ro: Dawby, Wa: Moil*, and *John Needham* Juſtices of the ſame court.

The Criers Fees from 11 Eliz.

For every Judgment, 4 d. *Judgments.*
For every final Judgment, 12 d.
For every Non-ſuit, 4 d.
For every Fine, 8 d. *Fines.*
For every Recovery, 8 d. *Recoveries.*
For calling a Jury, if they fill not, 2 s. *Juries.*
For every Jury, if they fill, and ſerve, and give up their Verdict the ſame day, at the Bar the ſame day, and for keeping them till then, 6 s.
If the Jury ly all night, that we be forced to watch and wait on them all night, 30 s.
For carrying every bundle of Records out of the Treaſury into the court, and back again into the Treaſury, 6 d. *Carrying Rolls.*
For every Attorney that is ſworn, 6 s. *Attorn. jur.*
For every Bail, 12 d. *Bails.*
For every Oath in Court, 12 d. *Oaths.*
For every Wager of Law, old Fees, 4 s. 4 d. *Wager of Law.*
For every *Scire facias* called in court, 4 d.

Nisi prius. For every *Nisi prius* before my Lord Chief Justice, 4 s.

Guardians. For every admittance to a Guardian, 12 d.

The Fees of the Keeper of the Court, from 18 Eliz.

Feod. annuale. FRom the Clerk of the Treasury for hanging the Cloath of the Court, 6 s. 8 d.

Wagers of Law. Attorn. jur. For a Wager of Law and Wagermen, 9 s. 6 d.
For a Jury at Bar 5 s.
For every Attorney sworn in Court, 12 d.

Nisi prius. For a *Nisi prius* in *Midd.* 2 s.

Bails. For a Bail, 4 d.

Fines. For a fine, 4 d.

Deeds acknow. For a Deed acknowledged, 4 d.

Satisfaction. For satisfaction acknowledged, 2 s.

The Fees of the Clerk of the Inrolment of Fines and Recoveries.

Of fines and recoveries in groß. INprimis, the fee due to the Judges by the Statute of 23 *Eliz.* for inrolling of every Fine and Recovery, 6 s, 8 d.

Exemplific. *Item*, due to the Judges by the same Statute for exemplifying every Inrolment, 5 s.

Searches. For search of every Fine inrolled for every year, 16 d.

For

For copying every Fine inrolled, for every ſheet, 12 d. *Copies.*

For the Clerks Fee for inrolling by the Roll, 8 s. 8 d. *Inrolments.*

For exemplifying after the ſame rate, 8 s. 4 d. *Exemplificat.*

For every Rule upon Amendments, 3 s. 4 d. *Rules for amendments.*

For returning Writs of Covenants upon Fines and Writs of Entry, Summons, and Seiſins upou common Recoveries, as Deputy of Record for Sheriffs appointed by the Court, the ancient Fee is, 2 s. *Return of writ of Entry. Covenant. Seizins, &c.*

The Porter of the Court his Fees from 11 Eliz.

FOr every Writ of Entry with Mr: Attorney General, 4 d. *Writs of Entry.*

For a Jury at Bar, 5 s. *Juries at Bar.*

For a *Niſi prius*, 2 s. *Niſi prius.*

For a Wager of Law, 6 d. *wagers of Law.*

For a Fine acknowledged, 4 d. *Fines.*

For a Bail, 4 d. *Bails.*

For ſatisfaction acknowledged, 2 d. *Satisfaction.*

For the Attorneys Oath, 12 d. *Attorn ſworn.*

For a Guardian, 4 d. *Guardian.*

Alienation Office.

THomas Rayenſcroft, Francis Poulton, George Coultrop, Eſq: Commiſſioners.

Tho: Bond Esq: Receiver,
Take no Fees, but receive a certain ſtipend from the King.

Fees taken by the Maſter of the Chancery, for that Office appointed.

Docquet. FOr ſigning every Docquet upon Licence and pardon of Alienation, 2 s.

Pt. Writs. For every Writ of Entry, for Lands holden in chief, 2 s.
For Writs of Entry of Lands not holden in chief, 4 d.

Affidavits. For Affidavits upon diſcharge of Tenures, 2 s.

The uſual Fees taken in the Office of Compoſitions for Alienations, by the Clerks there.

Certificate. FOR a Certificate upon a Writ of Entry, 3 s. 4 d.

Pardon. For the Warrant to the Great Seal for pardon of Alienation, 10 s.

Diſcharge of Proceſs. For viewing the Subjects Evidences, ſearch of the Tenures, and drawing of the Affidavit with Proceſs, to be diſcharged, 6 s. 8.

Releaſe. For a Releaſe in nature of a pardon of alienation upon a common Recovery, and for the like Releaſe upon a ſpecial Livery, and alſo for a Releaſe upon a general

a general pardon at the Coronation, or other times for each of them, 11 3s. 4d.

For the note of a Sheriffs Diſcharge upon a Seizure, 3 s. 4 d. *Diſcharge of Seizure.*

For every Exo. and for certifying thereof into the Exchequer, 12 d.

For the Sheriffs acquittance, 6 s. 8 d. *Acquittance.*

FOr entring in a large Book every Writ of Covenant finable, *videlicet*, in the Term-time, 6 d. *Entry of Writs.*

And in the Vacation, 12 d.

For entring in another Book remaining in the ſaid Office every Docquet upon a Licence of Alienation in the Term time, 12 d. *Licence of Alienation.*

And in the Vacation, 2 s.

For every Docquet for a pardon of Alienation in Proceſs of *Diſtringas*, or *Scire facias*, 2 s. *Pardon.*

For every Writ of Entry of Lands holden *in capite*, and entred in the ſame Book, 6 d. *Entry of Lands holden.*

And in the Vacation, 12 d.

FOr indorſing every Writ of Entry, 6 d. *Indorſing Bre. Intr Bre.*

For indorſing every Writ of Covenant in Term, 4 d.

In the Vacation, 6 d.

For entring unfiled Writs, 6 d.

For drawing the Diſcharges of Tenures in Parliament, and entring them, 3 s. *Diſcharge of Tenures.*

The Under Sheriff of Middlesex *taketh these Fees following in his Majesties Court of Common Pleas.*

Warrant. For a Warrant upon a *Cap.* for every name, 4 d.

Return Venire facias. For a return of a *Venire facias*, 2 s.

For a Warrant upon a *Cap. utlegat.* 4 d.

Return Habeas Corpus. For a return of a *Hbeas corpora Juratorum*, 4 s.

Sum. Jur. For summoning the Jury, for every name, 4 d.

Cepi corpus. For a *Cepi corpus*, for every name, 4 d.

Return exfa. For return of an *Exigent*, for every name, 4 d.

Return Procl. For return of a Proclamation, 12 d.

Scire facias. For return of a *Scire facias*, 2 s.

For return of a *Nihil habet* on a *Scire facias*, 12 d.

The

The Warden of the *Fleet* his Fees.

A Note of the Fees due and belonging to to the Warden of the Fleet, *and under-Officers, as appeareth by a Commiſſion under the Great Seal of* England, *from the late Queen* Elizabeth, *in the third Year of her Reign, and confirmed in the ſeven and thirtieth Year of her Reign, what ever ſeveral Priſoner in their ſeveral degrees ought to pay.*

AN Arch-biſhop, a Duke, a Dutcheſs, are to pay for their Commitment-fee to the ſaid Warden and his Officers, having the firſt weeks diet with wine, 21 l. 10 s. *Commitments.*

Alſo they are to pay for their ordinary weekly diet with wine, 3 l. 6 s. 8d.

A Marquis, a Marqueſs, an Earl, a Counteſs, a Vice-counteſs, are to pay for their commitment-fee to the ſaid Warden and his Officers, having the firſt weeks diet, 14 l. 11 s. *Commitments.*

Alſo they are to pay for their ordinary weekly diet with wine, 2 l.

A Lord Spiritual, or Temporal, a Lady, the wife of a Baron, or Lord,

are to pay for the Commitment-fee as aboveſaid, having the firſt weeks diet with Wine, 11 l. 4 s. 10 d.

Alſo they are to pay for their ordinary weekly commons, with Wine, 1 l. 6 s. 8 d.

A Knight, a Lady, the Wife of a Knight, a Doctor of Divinity, a Doctor of Law, or others of like calling, are to pay as aforeſaid for their commitment fee, having the firſt weeks diet with wine, 5 l.

Alſo they are to pay for their ordinary weekly commons, with wine, 18 s. 6 d.

Commitments. An Eſquire, a Gentleman, a Gentlewoman that ſhall ſit at the Parlour commons, or any perſon under that degree, that ſhall be at the ſame commons, are to pay for their commitment-fee as aforeſaid, having the firſt weeks diet with wine, 3 l. 6 s. 8 d.

Alſo they are to pay for their ordinary weekly commons with wine, 10 s.

A yeoman, or any others that ſhalbe at the Hall commons, man or woman; are to pay for their commitment-fee having the firſt week s diet, 33 s. 4 d.

Alſo they are to pay for their ordinary weekly commons. 5 s.

A poor man in the Ward, that hath part of the Box, is to pay for his commitment-fee, having no diet, 7 s. 4 d.

Also there is due to the said Warden 20d per diem, *for the whole day, and* 10d. *for every man, that he may lawfully licence to go abroad.* *Licence to go abroad.*

MOreover the said Warden hath for return of Writs, as Sheriffs and Bailiffs of Liberties have, by which he hath allowance for return of every *Habeas corpus* or Attachment, 2 s. 4 d. *Return of writs.*

Also for every *Habeas corpus cum causa*, there are Fees for returning the causes, *videlicet*,

For allowing the Writ,	2 s. 4 d.
For returning the first cause,	2 s.
For every Execution,	2 d.
For every Action,	12 d.

Which are due to the Wardens Clerks, and 5 s. to the Wardens Servants for bringing every Prisoner safe to the Bar, *Bringing a Prisoner to the Bar.*

Also he hath for allowance of every *Supersedeas* and Discharge, 2 s. 4 d. *Allowance of Supersedeas.*

Also when any man is committed by Order out of the Courts of Star-chamber, Chancery, Court of Wards and Liveries, Court of Exchequer, Court of Requests, and Court of Dutchy, the Wardens Servants (being sent to apprehend them, and bring them to the *Fleet*, according to the Tenour *Travelling charges for apprehending parties committed.*

of

250

of their Commitment) have 4 d. the mile where they are apprehended, and 6 d. the mile back again, and the Clerk hath 2 s. for making the Writ.

A Table of the due Fees of the Prothonotaries Court in the Common Pleas.

These are the Fees due and belonging to the three Prothonotaries of the Court of Common Pleas at Westminster, *for Entries of Declarations, Pleas and Judgments. And also for making and entring of Writs in their several Offices, and for other dues belonging to them, confirmed and allowed by the late King, by his Letters Patents under the Great Seal of* England, *dated at* Cambury *the 22. of* July *in the 12. year of his Reign, and are mentioned and expressed in a Schedule of Fees to the said Letters annexed, and recorded in his Majesties Court of Common Pleas at* Westminster *in the Term St:* Michael *next following*, Rot quinto, sexto, septimo, octavo, nono.

Common Decl. and Pleas.

In primis, for the entry of every common Declaration, common Plea in Bar, wherein no Free-hold is pleaded, common Replication, and Rejoinder in Actions personal, 12 d.

Special Narr: in Actions personal.

For the entry of every special Declaration, special Plea in Bar, or Abatement, Free-hold, Replication or Rejoinder, and Pleas subsequent, in sheets, every sheet containing 12. lines at the least, and every line containing ten words, 2 s.

And

And for every ſheet exceeding, 8 d.

For every Declaration in Actions upon the caſe, *Ejectione firmæ*, accompt, annuity, conſpiracy, covent, deceit, partition, *Plegiis, acquiet.* and Debt upon Statutes, Plaint in Aſſize, and the like ſpecial Actions, and in real, mixt, and popular Actions, if the Declaration or Plaint exceed not three ſheets, 2 s. *Special Nativ. in ſpecial Actions.*

And for every ſheet exceeding, 8 d.

For the entring of every Bar, Replication and Pleas, ſubſequent in every of the Actions laſt above recited, and in the like actions, not exceeding three ſheets, 2 s. *Bar in ſpecial Actions.*

And for every ſheet ſo exceeding, 8 d.

For the Oyer of every Bill, Obligation, Indenture, Record, or Certificate, or the like, entred *in hæc verba*, not exceeding the length of three ſheets, 2 s. *Oyer de faits.*

And for every ſheet above that length, 8 d.

For recording of every appearance by the Court, 2 s. 4 d. *Appearances.*

For the entry of every Recognizance without condition, challenge to the Sheriff, or Coroners, or to the Array, or other ſpecial Averments, 2 s. *Recognizance.*

And for the entring of every Recognizance with a condition, 4 s.

For every Judgment in Debt, Treſpaſs, or Detinue, without a Tales for the Prothonotary, 2 s. *Judgments.*

And

Adjournments. And for entring every Adjournment, 4 d.

Judgments. For ever Judgment with a Tales, beſides the Fee above recited, 2 s.

Remanets. For every *Remanet*, and Judgment or coſts given to the Defendant by the Statute beſides the Fee aboveſaid, 2 s.

Judgments. For every Judgment in all other Actions, as well perſonal, as mixt, and real, and Prohibitions, and the like, 4 s.

Satisfaction. Recordatur. Diſcont. Retraxit. Nolle proſequi. For every ſatisfaction, *Recordatur*, Diſcontinuance, *Retraxit*, Relinquiſhment, *Nolle proſequi*, or the like, in Actions perſonal, 4 s.

And in real Actions, 2 s.

Recoveries. For the entry of a ſingle Recovery, 4 s. and the Writ of Seiſin thereupon, 10 s. 6 d.

And for every Voucher more, 4 s.

For the entry of every *Mittimus & Dedimus poteſtatem*, for a common Recovery, 6 s.

For the entrance of a Summons *ad warr.* for a common Recovery, and the Writ of Summons *ad warr.* 4 s. 6 d.

For the entry of a *Certiorari* to certifie a Warrant of Attorney for the Tenant or Voucher, 4 s.

And if for both, 6 s.

Foreign Voucher. For every foreign Voucher ſent to the Common Pleas to ſummon the Vouchee, if the Record be not above three ſheets, 2 s.

And for every ſheet more, 8 d.

The like Fees are to be paid when the Record

Record is remitted back again, after the Voucher determined, 2 s. 8 d.

For the Entry of every ſpecial Verdict, whereupon a *Cur. adviſar. vult.* is entred, being not above the length of three ſheets, written as aboveſaid, 2 s. *Special Verdict.*

And for every ſheet exceeding that length, 8 d.

For the entry of every general Verdict, with a *Cur. adviſar. vult.* without a Tales, 2 s. *General Verdict.*

And with a Tales, 4 d.

For the entry of every *Remittitur* of Debt or Damages, 12 d. *Remittitur.*

For the entry of every Information upon any penal Law, and ſigning the *Sub pœna* onely, 2 s. 8 d. *Information.*

For the entring of every Surmiſe for a Prohibition to be granted, not exceeding the length of three ſheets, as aforeſaid, 2 s. *Prohibition.*

And for every ſheet above that length, 8 d.

For the entry of the Oath of every witneſs to prove the Surmiſe in a Prohibition, or *Audita querela* brought by an Infant, and the entry of the Proofs *de morte & vita virim*, Dower, and the like Actions and Suits, 2 s. *Proof de ſugg.*

For the releaſing of any default in any real Action, 2 s.

And entring the recital of the grand Cape, 4 s.

And if under five Marks, *Nihil.*

For

Exam. Record. For examining every Record of *Niſi prius*, 12 d.

Record in Coun. Palat. For making the Record for trial of an Iſſue in any of the County Palatines, for the firſt three ſheets, 2 s.

And for every ſheet more after, 4 d.

Exemplific. For the exemplification of any Record, not exceeding ſix ſheets, 5 s.

And for every ſheet exceeding that rate, 8 d.

Seizin in dower. For the entring of Seiſin in Dower, and dying ſeized, the Return of the Seiſin, exceeding not above three ſheets, 4 s.

For every ſheet exceeding, 8 d.

Non ponend. in aſſis. *Cog. de Pleas.* For entring of Writs of Exemption *de non ponend. in jurat.* and Patents *de libert. allocand.* and Protections, Cognizance of Pleas, and the like, according to the rates aboveſaid, if they exceed not three ſheets, 2 s.

And for every ſheet exceeding, 8 d.

Judgment per. default in waſt. *Quare impedit.* For the entring the default upon the Diſtreſs in Waſte, *Quare impedit*, and the like, and Judgment thereupon, if the Title or Count do not exceed three ſheets, 6 s. 4 d.

And if it be more than as aforeſaid, for every ſheet, 8 d.

Quo Warranto. For entring of *Quo Warranto*, if it exceed not three ſheets, 2 s.

For the entry of every Plea thereupon, according to the ſame rate before, 2 s. 8 d.

For

For the entry of a Plea of accompt pleaded before Auditors, if it be not above three ſheets, written as aboveſaid, 2 s. *Account before Auditors.*

And if more, for every ſheet exceeding, 8 d.

For the entry of every Summons, and Severance, and Aid Prayer, 2 s. *Severances.*

For the admiſſion of an infant to his *Prochein amie*, or Guardian 2 s. *Aid Prayer.*

And if it be by commiſſion 4 s.

For entring of the Defendants diſcharge upon a *cap. pro fine*, or for a contempt, 2 s. *Cap. pro fine.*

For the like upon Reſcous, returned and admitted to his fine, 4 s.

For traverſing of a Reſcous, and Iſſue thereupon, 6 s.

For entring of the allowance of every general and ſpecial pardon of Outlary before Judgment, and after, 5 s. 4 d.

For entring of a *Dies dat*, in Debt, detinue and Treſpaſs, 12 d.

And in all other Actions, 2 s.

For the entring of the Receit of a Feme covert, Tenant in tail, Leſſee for years, or the like, 2 s.

And for the entry of the Plea, if it exceed not three ſheets, 2 s.

And for every ſheet exceeding, 8 d.

And if the Receit be by Writ, then more for entring of the Writ, 2 s.

For the entring of an Aſſize delivered in the Common Pleas by Juſtices

of Assize to be inrolled, for every sheet, 12 d.

And if the Assize come into the Common Pleas by *Certiorari*, then more for entring the *Certiorari*, 2 s.

Abridgment. For entring every Abridgment of the demand in Dower, Assize, or the like, 2 s.

Pone. For the entry of every *Pone* to remove a Plea by Writ out of the County Court there holden by Justices, and for the return of the *Pone*, 4 s.

Mittimus. For the entring of any Record sent in the Common Pleas by *Mittimus*, or otherwise; and likewise for the entry

Rege inconsulto. of every *Rege inconsulto*, or such like, if it exceed not three sheets, 2 s.

For every sheet so exceeding, 8 d.

Certificate of bastardy. For the entring of every Certificate of bastardy certified by the Bishop, and the awarding of the Writ and Judgment thereupon, 6 s.

Journeys accounts. For the entry of the Licence of the Court, to purchase a new Writ by journeys accompts, 2 s.

Delivery of Record. For the entry of every Original writ delivered of Record in real or mixt Actions, 8 d.

Challenge. For the entry of every sheet above three sheets of every challenge to the Sheriff or Coroners, or to the Array, or other speeial Averments, or the like, 8 d.

Remanet. For the entry of every *Remanet* in real Actions, 4 s.

For the entry of every *Remittitur* in real

real and mixt Actions, 2 s.

For the entry of every sheet above three sheets of every Aid-prayer, 8 d. *Aid prayer.*

For the entry of an Admission of a Guardian, if it be by Commission, and *Mitimus*, 6 s. *Admission to Guardians.*

For the entry of a Privy Seal, for every sheet, 8 d. *Privy Seal.*

For the entry of the Licence of the Court to compound upon penal Statutes, 2 s. *Licence.*

For entry of every Warrant of Attorny made by the Tenants in common Recoveries, or the like, after their Appearance at the Bar, 2 s. *Warrants of Attorney.*

For every Judgment by special confession of the Title in *Quare impedit*, or the like, if it exceed not three sheets, 4 s. *Quare impedit.*

And for every sheet after, 8 d.

For the entring of every special Imparlance, 2 s. *Special Imparlance.*

For the entring of every *Committitur* of a Prisoner by the Roll, being brought to the Bar by Writ, and every render of the body in discharge of the Bail, 4 s. *Committitur.*

But if it be without Writ, then in either Case but 2 s.

For entring of every demand of a Prisoner to appear and remand the said Prisoner, 4 s. *Remand.*

For the entry of every Essoyn in the Plea-rolls, as upon Wagers of Law, 12 d. *Essoyns.*

For the entry of the Bail upon every

Reverſal for inſufficiency of *Exigent*, or of the Return, 2 s. 4 d.

Narr. ſu'. demiſe. For the entry of every Declaration in Debt upon Demiſe, or the like ſpecial Declaration, if the Declaration exceed not three ſheets, 2 s.

And if ſuch Declaration exceed the number of three ſheets, then for the entry of every ſuch ſheet, containing twelve lines, and every line ten words, 8 d.

Common Decl. For the entry of every ſeveral count upon an Original in Debt, Detinue, Treſpaſs, and the like, 12 d.

Actions ſuper caſum. Account. For the entry of every ſeveral count in Actions upon the Caſe and Account, and the like upon ſeveral days, if the count not exceed three ſheets, 2 s.

And for every ſheet ſo exceeding, 8 d.

Special condition. For the entry of every ſpecial condition, or indorſment of any Obligation entred *in hæc verba*, not exceeding the length of three ſheets, 2 s.

And for every ſheet ſo exceeding, 8 d.

Common condition. But if the condition be in Debt for payment of money, at one day, or under the length of two ſheets, then for the entring thereof but 12 d.

Mittimus. Certiorari. For the entry of every *Mittimus* or *Certiorari*, and the Return thereof, 4 s.

But if the Return thereof exceed three ſheets, then for every sheet ſo exceeding, 8 d.

Prohibition. For entring of the Count in a Prohibition, and pleadings thereupon after

after an appearance of the Defendant, not exceeding the length of three sheets, 2 s.

And for every sheet above that length, 8 d.

For the entry of every Writ of Attaint, or false Judgment, 2 s. *Attaint, false Judgments.*

For the entry of the Return thereof and the Assignment of Errours or false Oaths, not exceeding three sheets, 2 s.

And for every sheet more, 8 d.

For the entry of every sheet above three sheets of the Oath of every Witness examined to prove the Surmise in a Prohibition, or *Audita querela* brought by an Infant, and the entry of the proofs *De morte & vita viri* in Dower, and the like Actions and Suits, 8 d. *Proof in a Prohibition. Audita querela and Dower.*

Fees due to the Prothonotaries for Writs, and the entries of them amongst other dues. *Fees for Writs.*

FOr every Writ of Prohibition, or consultation, not exceeding four sheets, 2 s. *Prohibition.*

For every sheet so exceeding, 4 d.

For every Withernam return after appearance, second deliverance, Writ of Privilege, *Habeas corpus, Procedend. Certiorari*, Summons and Resummons, *Petit. cape, ve. fac. sci. fa. Elegit, Extent. Superſed. Sub pœna*, Writ to the *Habend. Withernam. Habeas corpus. Sum. & Alias. Spenal.*

Bishop, Attachment in Ass. *Distring. Jur.* *Habeas corpus*, and *Distringas* in Ass. & *Attaint*, and the like, *Habere fac. possessionem*, Writs of View, *Mittimus*, *Indempnitat. nois.* and every other special Writs, 2 s.

Entry of Writs. For the entring of every such Writ, which requireth an entry not exceeding four sheets, 2 s.

And if more, for every sheet as aboveſaid, 8 d.

Ca. fa. fi. fac. For every *Ca. sa.* & *fi. fa.* 6 d.

Testat. distr. For every *Testat. fur. ca. fa.* & *fi. fa.*

Inquire in tresp. *Distring. ad deliberand.* and Writs to inquire of Damages in Trespass and Replevin, 12 d.

Inquir. in casu. For Writs to inquire of Damages in

Cap. & Ex. pro fine. Covenant, Ejectment, Actions upon the Case, and the like, 2 s.

For every *Capias pro fine*, 6 d.

For the *Exigent* upon a *Capias pro fine*, 10 d.

Intra Return Bre. For the entry of the Return of every Writ in the Prothonotaries Roll other than the *Ca. fa* returned *non est invent*, and the *fi. fa.* returned *nulla habet bona*, whereupon further Process is awarded, not exceeding four sheets, 2 s.

And if more, then for every sheet, 8 d.

Bail sur. Priv. Habeas corpus. For the entring of every Writ of Privilege, or *Habeas corpus*, with the Bail for one cause, 6 s.

And for every name more, 2 s.

Committitur. For entry of every *Committitur* upon a *Habeas corpus una cum die & causa*, 2 s.

And

And for every other cauſe, 2 s.

For every Reverſal upon an Outlary for default of Proclamation with one name, and the Bail, or *nolle proſequi*, 4 s. 4 d. *Reverſal.*

For every name more, 2 s.

For every *Ca. ſa. & fi. ſa.* after a *Devaſtavit*, 2 s. *Ca. ſa. & fi. ſa. pt. Devaſtavit.*

Whereof by allowance from the Prothonotaries the Clerk hath had, 8 d.

For every ſheet exceeding four ſheets of Writs to inquire of Damages in Covenant, Ejectments, Actions upon the Caſe, and the like Actions, 4 d. *Inquir. in caſu, &c.*

For the Writ of *Liberat.* or the like ſpecial Writs, 2 s. *Liberat.*

Whereof by allowance from the Prothonotary, the Clerk hath had, 8 l.

For the entry of every ſuch Writ, and the entry of every other ſpecial Writ which requireth an entry not exceeding four ſheets, 2 s. *Intra. Bre.*

And for every ſheet ſo exceeding, 8 d.

For every *Diſtringas* in Detinue, 12 d. *Diſtringas.*

Whereof the Clerk by allowance from the Prothonotary hath had, 4 d.

For Writs to inquire of Damages in Covenant, Ejectment, Actions upon the Caſe, and the like Actions, if they exceed not four ſheets, 2 s. *Inquir. in caſe, &c.*

Whereof by allowance from the Prothonotary the Clerk hath had, 4 d.

For the entry of every *Committitur*, upon a *Habeas corpus una cum die & cauſa*, with one cauſe returned, beſides the entry of the Writ, 2 s. *Committitur.*

And for the entry of the Writ, 2 s.
And for every other cause returned, 2 s.

Process. Sur. Information. For the signing of all Process upon information, excepting the first *Sub pœna*, 1 s. 4 d.

The Prothonotaries Clerks Fees.

Copies. IN primis, for the copies of common Declarations and Pleas, for every sheet containing twelve lines, and every line ten words, 4 d.

For every sheet in real and mixt Actions, and Actions upon any Statute, and the like, 8 d.

Draughts. For drawing of every special Declaration, and Plea for every sheet, 8 d.

Continuance. For every continuance every Term of every Issue, Writ, *imparlance*, *demurrer* of special Verdict, or adjournment, 4 d.

Exemplificat. For exemplifying every Recovery with a single Voucher, 4 s. 8 d.

For exemplifying of a double Voucher, 6 d.

And for every Voucher more, 12 d.

For exemplifying of any Record, not exceeding eight sheets, 5 s.

And for every sheet more, 6 d.

Drawing of writs and Entries thereof. For drawing of every extraordinary long Writ after the rate of every sheet, 8 d.

And for the entry thereof (if it so require) for every sheet, 4 d.

For

For a copy of Judgment for every sheet, 8 d. *Copies of Judgments.*

For the entry of every Writ, and the Return thereof into the Prothonotaries Remembrance for drawing up of a Judgment, if it exceed not three sheets, 6 d. *Entries in remembr.*

And for every sheet after, 4 d.

For entring of every common Rule into the Bill of Pleas, or common Remembrance, 4 d. *Rules.*

For the entring and ingrossing every Summons for a Recovery, and for the making of the Writ of Summons, 2 s, *Summons for Recoveries.*

For the entry of every *Mittimus* and *Dedimus potestatem* for a Recovery, 2 s. 6 d *Mittimus.*

For the ingrossing of every *Nisi prius* after the rate of every sheet, 4 d. *Ingro. Nisi prius.*

For entring of every *Testat. sur. casa & fi. fa.* 4 d. *Intrat. case testat.*

For the search in every Term in the Prothonotaries Office, in his Docquets, or Remembrances, 4 d. *Searches.*

For the issuing out of the Court-money, of the party receiving it, 1 d. in l. *Court-money.*

For the making of every long Writ, as Prohibitions, and the like, for every sheet, 4 d. *Making long writs.*

For the prosecution and issuing out of Process for the King, to bring in the party for to make fine for his contempt untill the party render himself, or be outlawed, besides the Fees of the Court, 3 s. 4 d. *Cap. pro fine.*

And if there be cause of prosecuti-

on after the *Exigent* returned, then more. 3 s. 4 d.

Copy ſuggeſt. For the copies of ſuggeſtion to grant a Prohibition, for every sheet, 8 d.

Tract. Prohibit. Special Verdict. For drawing of every Surmiſe to have a Prohibition, ſpecial verdict, and the like, for every sheet, 8 d.

The Prothonotaries Clerks Fees for Informations onely.

Information. FOr ingroſſing of every Information, 8 d.

For a copy of the ſaid Information, if it amount to the number of five sheets of paper, or upwards, 3 s. 4 d.

If it be under the number of five sheets, then for every sheet, 8 d.

For the making of every *Cap. pro fine* upon an Information, 6 d.

For entring of the general Iſſue upon the Roll where the Information was firſt entred in the Term it was firſt exhibited, 8 d.

For the regiſtring of every Licence to compound in the Office-book, 4 d.

An ancient Fee due to the ſecond Prothonotaries Clerk onely.

Fines. FOr recording of every Fine acknowledged at the Bar, by Writ, and moved by a Serjeant, 4 d.

Fees

Fees due to the Secondaries of the Prothonotaries in their ſeveral Offices. — *Secondaries Fees.*

FOr the copy of every common Rule, 4 d. — *Copies of Rules.*

For taking a note of the Rule of the Judges in Court upon a motion of a Serjeant, for drawing the ſame Rule in paper in *Latine* words, and entring it into the Bill of Pleas, and the copy there of, the draught not exceeding ſix lines in paper, 8 d, — *Drawing and entring of Rules.*

If the Rule exceed 6. lines, then 12 d.

For every wager in Law, in Court, or Nonſuit of the Plaintiff, upon a wager of Law, 12 d. — *Wagers in Law.*

For the entry of the *Committitur* of any Defendant to the *Fleet* in Execution of any Judgment, or otherwiſe in Court, and for making a copy thereof for the Warden of the *Fleet*, containing the cauſe of the commitment, 12 d. — *Committitur.*

For the entring of every Commitment to the *Fleet*, of any perſon yielding himſelf in diſcharge of his Bail, and for the like copy, 12 d.

For attending the Judg from his chamber to *Weſtminſter*, to take a privy Verdict tried at the Bar, 3s. 4d. — *Privy Verdict.*

For reading the Record of a Demurrer in Court or Verdict, 12 d. — *Read. Record.*

For taking Bail in Court, 12 d. — *Bails.*

For

Admission to Guardians. For entring of an admission of an Infant to his Prochin Amy, or Guardian in the Prothonotaries remembrance, 1 s. 4 d.

Copies of Issue and Jurors names. For the Copy of the Issue and Jurors names to be delivered to the Jury upon any Trial at the Bar, 12 d.

Trials at Bar. For reading of Evidences upon Trials at the Bar of each Party, Plaintiff, and Defendant, 3 s. 4 d.

Satisfact. Recordatur. Discontinuance. For entring of every satisfaction by special Warrant, *Recordatur*, and discontinuance, 8 d.

Satisfaction. For every satisfaction by general Warrant, 4 d.

For entry of every Will or Letters of Administration to enable an Executor or Administrator to acknowledg satisfaction, and the entry of the satisfaction, 12 d.

Interrogatories. For every Copy of Interrogatories, Depositions of persons examined upon Interrogatories by Order of the Court for every sheet, 8 d.

Per Breve de Privato Sigillo,

Wolseley.

Fees of the Upper Bench.

A note of Fees due, and time out of minde used to be paid to the Prothonotaries, or chief Clerks of the Court of Upper Bench, and to their Clerks, as the same was presented upon Oath by virtue of Commission in Apr. 1630. *by 29. Attornies of the same Court, and hitherto taken.*

Writs.

For a *Latitat.* 5 s. 1 d.

Supersedeas.	*Prohibicon.*
Exigent in Appeal.	*Consultacon.*
Distring. in Attaint.	*Proprietate probam.*
Habeas corpus.	*Distring. in Detinue.*
Certiorari.	*Inquir. de valore.*
Procedend.	*Resum.*
Elegit.	*Reattachmt.*
Sub pœna.	*Vefa. defend. in audita querela.*
Return bend.	*Habere fac. seiam. & possession.*
Withernam.	*Respons. in Attaint.*
Second deliverance	*Rend. expen.*
Restitution.	*Bre. expe.*
Scire facias.	*Mittimus.*
Diminucon.	
Libello bend.	

All these are accountable for to the Prothonotaries, *viz.* For every one 2 s. out of which they allow the Clerks for writing 4 d.

Venire

Venire facias.	*Sur. cepi corpus.*
Distring. Jur.	*Averm. vers. vic.*
Ali. & [illegible] cap.	*Fieri facias.*
Casa.	*Test. fl. fac. & casa.*
Inquir. de Damnis.	*Distr. nuper vic.*
Habeas Corpus.	*Non omittas.*

For every of these besides the Seal, 6 d. And for every *Deliberat de Recordo*, 4 d. And for the *Jura* of the *Distr.* of *Ni. pri.* 4 d. But all these have been always to the Prothonotaries Clerks, and are not accounted for to the Prothonotaries.

In every Action wherein the *Plt.* recovereth damages to the value of 13 l. 6 s. 8 d. he payeth 12 d. in the pound for damage clear, when the Judgment is signed.

Upper Bench Fees for Entries.

For every Deed how short soever, 2s.
For every Action of Trespass, 1s.
For every not guilty, 1s.
For every Justification in Trespass, 2s.
For every Replication, 2s. 8d.
For every Action of the Case not above three sheets, 2s.
For every general Issue to it, 1s.
For every *Ejectione firme*, 2s.
For every Declaration in Appeal, 2s.
For every general Issue therein, 2s.
For every Recogn. *Sur. He. corp.* for every Defendant severally, 2s.
For every Deposition upon all Prohibitions, 2s.
For every Judgment by Circumst. 4s.

out

Out of which the Clerk is allowed, 8d
For every other Judgment, 2s
whereof the Clerk is allowed, 4d
For every Diſmiſſion, 2s
For every Commitment in Execution, 2s
For every ſatisfaction, 3s
For every Appearance recorded, 2s
For every *Non proſ.* 2s
For every Action of Debt, Detinue, or Treſpaſs, 1s
For every general Iſſue therein, 1s
For every condition performed, 2s
For every Replication to it, 1s
For a Writing denied, and keeping of the Writing, 2s
For every Juſtification in Battery, 2s
For every *Aud. quer.* how ſhort ſoever, 2s
For every ſpecial Imparlance, 2s
For every general Imparlance upon the Plea-roll 12d
For every default upon Record, 2s
For ſuch a ſuggeſtion upon a Prohibition how ſhort ſoever, 2s
For every Recognizance to it, 2s
For every W. of Er. how ſhort ſoever, 3s. 4d
For entring the Errours, 2s
For entring *in nullo eſt Errat.* 2s
For every Diminution, 2s
For abatement of a Writ of Errour and licence to ſue a new one, 2s
For entring of the ſame, 2s
For every Recognizance ſingle, or with condition, 2s
For every Inrolment whatſoever, longer than three ſheets, 6s. 8d
After the rate for a Roll on both ſides, 6s. 8d

For

Venire facias.	*Sur. cepi corpus.*
Distring. Jur.	*Averm. vers. vic.*
Alia [illegible]	*Fieri facias.*
Cessa.	*Testat. & cessa.*
Inquir. de Damnis.	*Distr. nuper vic.*
Habeas Corpus.	*Non omittas.*

For every of these besides the Seal, 6 d. And for every *Deliberat de Recordo*, 4 d. And for the *Jura* of the *Distr.* of *Ni: pri.* 4 d. But all these have been always to the Prothonotaries Clerks, and are not accounted for to the Prothonotaries.

In every Action wherein the *Plt.* recovereth damages to the value of 13 l. 6 s. 8 d. he payeth 12 d. in the pound for damage clear, when the Judgment is signed.

Upper Bench Fees for Entries.

FOr every Deed how short soever, 2s.
For every Action of Trespass, 2s.
For every not guilty, 1s.
For every Justification in Trespass, 2s.
For every Replication, 2s. 8d.
For every Action of the Case not above three sheets, 2s.
For every general Issue to it, 1s.
For every *Ejectione firme*, 2s.
For every Declaration in Appeal, 2s.
For every general Issue therein, 2s.
For every Recogn. *Sum. Hr. corp.* for every Defendant severally, 2s.
For every Deposition upon all Prohibitions, 2s.
For every Judgment by Circumst. 4s.

out

Out of which the Clerk is allowed, 8d
For every other Judgment, 2s
whereof the Clerk is allowed, 4d
For every Diſmiſſion, 2s
For every Commitment in Execution, 2s
For every ſatisfaction, 3s
For every Appearance recorded, 2s
For every *Non proſ.* 2s
For every Action of Debt, Detinue, or Treſpaſs, 1s
For every general Iſſue therein, 1s
For every condition performed, 2s
For every Replication to it, 1s
For a Writing denied, and keeping of the Writing, 2s
For every Juſtification in Battery, 2s
For every *Aud. quer.* how ſhort ſoever, 2s
For every ſpecial Imparlance, 2s
For every general Imparlance upon the Plea-roll 12d
For every default upon Record, 2s
For ſuch a ſuggeſtion upon a Prohibition how ſhort ſoever, 2s
For every Recognizance to it, 2s
For every W. of Er. how ſhort ſoever, 3s. 4d
For entring the Errours, 2s
For entring *in nullo eſt Erratum.* 2s
For every Diminution, 2s
For abatement of a Writ of Errour and licence to ſue a new one, 2s
For entring of the ſame, 2s
For every Recognizance ſingle, or with condition, 2s
For every Inrolment whatſoever, longer than three ſheets, 6s. 8d
After the rate for a Roll on both ſides, 6s. 8d

For

For half a Roll, 3 s. 4 d.
For every Bail by Recogn. 2 s. 6 d.

Upper Bench Fees of Clerks and Attornies.

FOr their Fee in every cause for every Term, 3 s. 4 d.
For their Fees at every *Ni. pri.* and inquiry of damages, 3 s. 4 d.
For their Fee in every Appeal, and Assize every Term, 6 s. 8 d.
For drawing every Declaration not exceeding a sheet, 1 s.
For every sheet above one, 8 d.
For drawing every Action on the case and covenant, how short soever, 3 s. 4 d.
For drawing every Ejectment, 2 s.
For every sheet ingrossed in Parchment, 4 s.
For drawing a Surmise upon a Prohibition, every sheet, 1 s.
For drawing special pleadings, every sheet, 8 d.
For copies of Declarations, Pleas or other things, every sheet, 4 d.
For continuing every cause every Term, 4 d.
For entring all things above three sheets, every sheet, 8 d.
For every Judgment by circumst. 5 s.
For making every Bail, 4 d.
For making every Bill of *Middlesex*, *Distring. super vic.* and *He. corp. per præceptum* thereupon, 8 d.
For making every *He. corp. ad fac. He. corp. cum privileg. Certiorari, Procedend. elegit & habere fac. possessionem*, besides 4 d. allowed by the Prothonotary, 1 s. 8 d.

For

For every sheet in a Writ of Inquiry, Prohibition, Consultation, &c. 4 d.
For entring every *Scire facias*, 1 s.

Fees received by the Secondary.

FOr taking the acknowledgment of a Deed in Court, 1 s.
For signing every Judgment by confession, *nihil dicit*, *verdict & demurrer*.
Also for acknowledgment of every Deed, for every Judgment pronounced in open Court, every Rule to alter a Visue, for every Rule, for a Prohibition, Consultation, Attachment, &c. He receiveth for the Poors Box, 1 s.
For allowance of a Writ of Errour, *coram nobis residend.* 2 s.
Whereof to the Box, 1 s.
For an allowance of an *Audita querela*, 2 s.
Whereof to the Box, 1 s.

upper Bench Fees.

FOr every common Bail, 1 s. 2 d.
For a special Bail, upon a *Habeas corpus*, *Certiorari*, or Attachment, 4s. 1d.

Fees received by the Secondary for the Judges.

FOr every *Habeas corpus ad fac. & recipiend.* 4 s.
For every *Procedendo*, 4 s.
For every *Certiorari* to remove a foreign Attachment, 4 s.
For a *Procedendo* thereupon, 4 s.

For

For every *Habeas corpus cum privil.* 3s
Out of ever *Latitat* they have 8d

Fees received by the Judges Clerks.

FOr every Warrant for a *Hab. corp.* or any thing to which the Judg puteth his hand in the Term-time, 1s
And in the Vacation, 2s
For the acknowledgment of a Deed which he saith is for his Master, 6s. 8d
And for his own Fee, 2s
For taking the Depoſition of Witneſſes upon a Suggeſtion for a Prohibition, for every Witneſs, 6s. 8d
And for his own Fee for every Witneſs, 2s

Fees paid the Clerk for the Papers.

FOr copying every ſpecial Plea, every ſheet, 4d
For making the Paper-book either Iſſue or Demurrer, every ſheet, 8d
For entring into his Book every Record to be read in Court, 1s
For entring into his Book every cauſe, to hear counſel on both ſides, 1s
For entring every Trial at Bar, 1s

The Keeper of the Poſteas.

HAth for the receiving, marking, keeping, and delivery of every *Poſtea*, 4d

The

The Keeper of the files of Declarations.

HAth for the fyling, pying, and ſhewing the files of every Clark, for every Terme, 2 s.

Fees paid to the Clerke of the Rules.

FOR entring every Rule, except generall Rules for anſwer, 4 d

For a Copy of every Rule, 4 d

For every generall Rule for anſwer, being above three 2 s.

For every Rule given in Court, with a copy for a Prohibition, or conſultation, he taketh 12 d. and the due is but 8 d. which hath been taken not above 25 yeeres. 8 d.

For every Rule with a copy given in Court the laſt day of a Terme he taketh 12 d. whereas the due is but 8 d. which hath been taken this two or three yeers, 8 d.

For evey copy of a Rule after the continuance day he taketh 8 d. whereas the due is but 4 d. which hath been taken this two or three yeeres, 4 d

All ſuch Affidavits as are read in Court he claimeth this two yeers, or thereabouts to have the keeping of them, and taketh for copies both of Plaintiff and Defendant at his owne diſcretion, which formerly hath not been.

Doggetmaker.

THe Secondaries Clerk, for making and keeping the Remembrances of Entries, &c. hath of every Clerk, every Term, 8 d

Keepers of the Bailes.

FOR entring the common Bailes into Parchment Rolls every Terme, every Clerk of the Office giveth what he pleaſeth.

Keepers of the Rolls of writs.

FOR carrying the Rolls of the Writs to the Hall, and the Office, he hath of every Clerk every Term that he pleaseth.

Fees paid to the Custos Brevium *and his Clarks.*

FOr every record of *Nisi Prius* in a short Action of Trespasse, 4s 6d
For every other Record how short soever, 5s
For every full Presse of *Nisi prius* or *Mittimus*, 6s
For every *Nisi prius* out of the Crown side, 6s 8d
For every full presse there, 1s 8d
For every *Nisi prius* upon an Inditement of murther, for every name that pleadeth to Issue, 6s 8d
For every short Exemplification in Trespasse, 10s
For every Exemplification containing a large skin 1l.
For the like in the Crown side, 2l
For every Exemplification in *Ejectione firme*, 13s 4d
For filing a Writ being a *Post diem* upon the *Angl.* 4d.
For all pt. *Terminums* at any time after the first week ended in the second Term, 1s 8d
For every *Warrant* of Attorney in murther, 1s
For every Sheriffs *Warrant*, 8d
For every other *Warrant* of Attorney, 4d
For every search for a Roll for ten years last past, 6d
For every search above ten years last past, 3s 4d
For search for Rolls for the six last Terms od
For search of every file of Declarations, Bails, Judicial, and other Writs after ten years 1s 4d
For the copy of every sheet between Party and Party, 4d
For a copy of a Deed inrolled, for every sheet 8d
For the File of an *Angl* for every Term after one, 4d
For the copies of every *Writ* or *Appeale*, every sheete, 8d

Fees

Fees now paid to the Custos Brevium *his Clarks.*

FOR writing every *Nisi prius* or *Mittimus*, being but one presse, 1s 6d

For every presse more then one, 1s

For writing every Exemplification in Trespasse or Ejectment, 3s 4d

For writing every large skin of Parchment Exemplified, 6s 8d

The Fees for writing every *Nisi prius* or *Mittimus*, were uncertaine untill about *Anno* 2. *Iac.* And then it was ordered by the Judges that the Clarks should have for writing of the first presse, 1s 6d. And if more, then every other presse, 12d. And every full presse to containe 60 lines.

Fees claimed by the Cryer and Porter. As *Cryer.*

FOR calling a Jury. 2s

For every Oath given in Covrt, 4d

For taking a Privy Verdict, 4s

For every argument in Law, 2s

For every wager of Law 2s

For every admission to a Gardian, 6d

For a baile taken at the Bar, 2s

For calling a Non-suit, 4d

For calling the *Record*, 1s

For calling a default, 1s

When a Pardon is pleaded, 2s

As *Porter.*

FOR every tryall at Bar 5s

For every privy Verdict, 2s

For summoning the Wager-men, 3s

For a baile taken at Bar, 2s

For a *Record* called, 6d

For default called 6d

For a Pardon pleaded, 2s

For a discharge of a *Rescous*, 4d

For a Baile taken in Court, 6d

Of all these Fees mentioned and claimed by the Cryer, and Porter, these following have been paid as due, during the time of our knowledge.

As Cryer.

FOR calling a Jury,	1 s
For swearing every witnesse,	4 d
For a wager of Law,	1 s
For a Non-suit,	1 s
For a default of a Record,	1 s
For a *defecit de lege*,	1 s

As Porter.

FOR summoning the Wager-men,	3 s
Also the *Porter* receiveth more for the Wager-men, where the Defendant wageth his law, or is ready to wage it,	1 s

Fees received by the Clark of the Errors immedially after the Statute 27. Eliz.

FOR the Lord cheife Justices fee for the allowance,	17 s 4 d
For the Receipt,	5 s
For the Return,	2 s
For the Certificate of the first presse,	6 s
For writing the first presse,	2 s
For a *Super sedeas*,	2 s 7 d

These Fees amounting to 35 s. 3 d. *were paid upon the allowance of the Writ, and for the* Supersedeas.

FOR the certifying of the Record for every presse, besides the first,	6 s
For writing of every presse after the first;	1 s
For the Roll,	1 s
For making *Non pros.* upon the Roll,	5 s

Also

Also immediately after the making of the Statute of An. Jac. *the Fees taken for the Bail were as followeth, upon a Writ of Errour.*

TO the Prothonotaries for the Recognizance, 2 s
To the Judges Clark, 2 s

Fees upon a Writ of Errour.

FOR making the Baile, 4 d
For drawing and entring the Recogniſance, 4 s
Now, and for the ſpace of thirty yeers laſt paſt, he hath taken upon the Receit of every Writ of *Errour* and *Superſedeas* in a groſs ſum 2 li. 6 s. 8 d
Alſo for certifying every preſſe beſides the laſt 6 s. 8 d
For writing every preſſe beſides the firſt, 2 s
For every *Superſedeas* beſides the firſt, with the Seale 9 s. 3 d.

Theſe laſt mentioned were ſet down by Sir John Popham, *late Lord chief Juſtice,* Ex relatione Edi. Page cler. Error, *but we do not certifie it upon our knowledge.*

ALſo he taketh for every bail in groſs ſum, 19 s. 4 d.
For every Writ of Error, *Tam in redditione judicii, quam in ajudicatione executiones,* he taketh double fees.

The Marſhals Fees as they were certified by Sir William Knowls *Knight, ſometime Marſhal of the Kings Bench.*

INprimis, for inlargement of every Priſoner which is termed his admiſſion fee 10 s.
Alſo he demandeth of every Priſoner upon his inlargement, a Fine, for not wearing of Irons.
For execution in every pound 3 d.
For actions in every pound 1 d. ob.

The Marſhall taketh for every diſmiſſion more then the former fee of ten ſhillings 8 s. 8 d.

The Deputy Marſhall, and Marſhals men, take for every Priſoner that is committed in Court 5 s. 6 s.

And for every Priſoner committed from the Judges Chamber 2 s. 6 d.

The Deputy Marſhall taketh for the allowance of every *Habeas corpus* 2 s 6 d.

The Clerk of the Fines.

THere was an Office invented and erected about 6. *Jacobi*, whereby is taken upon the filing of every Declaration in debt, where the debt is above 40 l. and not above 100. marks, 3 s. 4 d. And above a 100. marks, and not above a 100. l. 5 s. and after the ſame rate, and alſo in the every action on the caſe, and treſpaſſe for goods, where the damages are laid above 40 l. the like rates, ſo that the Plaintiff or Defendant be not a perſon priviledged, nor the Defendant in *Cuſtodia Marr.* whereas before 6. *Iac:* in all our memories, no ſuch monies were paid, or demanded.

Fees for trialls at Bar, taken by ſeverall Officers.

THe Cryer for calling the Iury 2 s
For ſwearing every Witneſſe 4 d
The Porter for keeping the doors 5 s
The Cryer for a Non-ſuit 2 s
The Deputy Marſhall 2 s
The Tipſtaves or Marſhals men for a Verdict, *ſedente curia* 8 s 6 d
If the Iury lye together all night 17 s 8 d

The

The Iudges Foot-cloathmeen, 12 d. a peece, 4 s
The Secondary receives for a Verdict in Court 2 s
And for a privy Verdict, 13 s. 4 d. which he saith is thus divided, *viz.* The Iudge that taketh the Verdict 6 s. 8 d. To the Secondary 2 s. and the rest being 4 s. 8 d. among the Officers that attend.

Of all the Fees mentioned, We present these following to be due.

TO the Cryer for calling the Iury 1 s
For swearing every Witnesse 4 d
For calling a Non-suit 1 s
To the Deputy Marshall 2 s
To the Porter for keeping the doors 1 s
To the Secondary for taking a Verdict in Court 2 s
To him for a privy Verdict 13 s 4 d
And now they take no other Fees then these last mentioned.

We pay into the Crown Office for estreating every amercement. 1 s

Also there is paid to the Secondaries Clerk by every one of the Prothonotaries Clerks every Term that he faileth to bring in his Rolls within 24. daies next following, after Trinity, Michaelmas, and Hilary Terms respectively, and within ten daies next after Easter Term, 12 d. whereas formerly they had time untill the Essoin day of the next Term, to bring them in without paying any Fee.

Also there is paid to the Secondaries Clerk for the filing of every common Bail, after six daies after every Term over and above the Fee. 4 d.

The Table of which severall payments last mentioned is remaining in the Kings Bench Office.

Fees due and received by Philizers.

FOr every *Cap. Alſ. Plur. Exigit, Proclama. & Diſtring.* in Treſpaſſe 6 d
For every Exigent & Proclamation in Replevin, 6d
For every *Pone cap. alſ. plur. Teſtat. in Replevin* 6 d
For every *Superſed.* upon the mean proceſſe aforeſaid 2 s
For every *Cap. Alſ. Plur. Teſtat.* and *Exigit* in *Truſ. ſup. caſum*, Action on a Statute, *Rap. cuſtodie Truſ. contra formam ordinationis*, Ejectments, and ſuch ſpeciall Writts 1 s
For the Proclamation thereupon 1 s
For the *Diſtring.* thereupon 1 s
For every *Cap. Alſ. & Plur.* in an appeal of *Mayhem* 1 s
For every *Cap. Alſ. & Plur.* in an appeal of Robbery 2 s
For every name in every *Cap. Alſ. & Plur.* in appeal of Murther 2 s
For every Proclamation in every appeal 2 s
For every general *Cap. utl. & delibatur de recordo* 10 d
For every ſpeciall *Cap. utl. & delibatur de recordo* 2 s 4 d
For every Writ of *Withernam*, ſecond deliverance, and return *habend.* before Avowry 2 s
For every *Venire facias* 6 d
For every *Diſtring. Iur. delibat. de recordo, & jur. Niſi prius* 18 2 d
For every *Subpœna* upon Iſſue by Originall 2 s
For entry of Declarations in treſpaſſe by Originall 1 s
For entring not guilty thereunto 1 s
For entring every Ejectment and Action upon the caſe not above three ſheets 2 s
If longer, then for every ſheet 8 d
For every generall Imparlance 4 d

For

For every ſpeciall Imparlance 2s
Copies of Writs of Attaint, before judgment *per* ſheet 8d

Fees due upon Tryals *at* Guild-hall, *to the Officers of the Court.*

TO the Clerk that reads the Record and Evidence 1s
To the Aſſociate 1s
For every default 2s4d
To the Cryer 1s
For ſwearing every Witneſſe 4d
The Marſhall 2s
The Foot-cloath 1s
The Green-cloath 1s6d
The Doorkeeper 1s
The Hall-keeper 1s
The Jury men 8s
Oyer-men, every one 4d
For ſummoning and keeping the Jury 4s4d
Lights 1s
Bar-keeper 1s
Return of the Poſtea 2s

Alſo the Aſſociate taketh in every cauſe where the Plaintiffs Attorney it not preſent, and of every Defendant which appeareth, and hath not his Attorney in Court, for a Warrant of Attorney 4s

The Exchequer.

THis Court hath formerly been a Court of much practiſe and in greate eſteem; but of late ſince the Revenues of the Crown have been ſold, there is but little buſineſſe to what formerly, and very likely to be far leſſe, when there will be little or nothing at all left of what related to the Crown, ſave only the Cuſtomes, Impoſt, Tonnage, and Poundage.

But yet of late the Court hath had much increaſe of buſineſſe, by reaſon of many Suits which are brought

brought by Parſons and Vicars againſt their Pariſhioners for the detaining of their tythes, which courſe hath proved very ſucceſsfull to them in recovering and obtaining their juſt rights and dues.

The chief Iudges of this Court, are the Lord chief Baron, & three other Barons of the Coif, with whom alſo ſits one other who hath the name of a Baron, but hath no voice in Court as to any buſineſs, ſave the taking accounts of Sheriffs, Auditors, Bayliffs, Receivers, *&c.* The ſubordinate Officers are,

1. The Kings Remembrancer, now called the Lord Protectors Remembrancer, in whoſe Office are ſeverall Attornies.

2. The Lord Treaſurers Remembrancer, and in that Office likewiſe ſeverall Attornies.

3. The Clark of the Pipe.

The Controller of the Pipe, and ſeverall Clerks there.

4. The Clerk of the Office of Pleas in his Office; there are likewiſe ſeverall Attornies.

5. The Clerk of the Eſtreats.

6. The forraign Oppoſer.

7. The Auditors of the Court, which were anciently many.

8. Tellers, and one of them in chief, and under-Tellers their Subſtitutes.

9. The Clerk of the Tallies.

10. The Chamberlain of the Court.

The chief Uſher, and ſeverall other Uſhers.

The Uſher, and Porter of the Court, and Court-keeper.

The Keeper of the Records of the late Court of Augmentation.

This Court of Exchequer hath in it a divers way of proceeding.

As firſt, There is a courſe of proceeding ſuitable in moſt

moſt things to the Common Law, proceedings in other Courts, and that is, of their (*Quo minus*) out of the Office of Pleas, which Writ was anciently to be granted to ſuch parly onely, who was either Tenant, or Debtor, or ſome waies accountant to the King; and therefore the end of the Writ concludes, that he is for default of the Defendant, giving him ſatisfaction, leſſe able to ſatisfie the King; but at this day the practiſe is grown generall in all caſes almoſt, but more eſpecially in *Wales*, where no Writ out of the Upper-bench, and Common-bench lies, ſave onely a *Capias ut legatum*, and this Writ which ſo far relate together, as that they both pretend to be by way of Prerogative for the King: The rules formerly given for proceedings at Common Law in Upper-bench, *&c.* will ſerve you for this.

The Exchequer Chamber.

THis Court is as it were the Chancery of the Exchequer, in which ſits as the chief Iudge, or Iuſtiter, formerly the Lord Treaſurer, and Chancellor of the Exchequer, being aſſiſted with the Lord chief Baron, and the Barons of the Coif; and now that there is no Treaſurer, nor Chancellor, the Lord chief Baron, and the reſt of the Barons, and the proceedings had there before them, do much reſemble the proceedings in the Chancery, and therefore I refer you to what you will find following, of the proceedings in the Court of Chancery, which may be ſome guide to you in this.

The whole practiſe and proceedings which are generally in uſe at the Exchequer Bar, do relate for the moſt part to the two Remenbrancers of the court, which as I told you before, were the Kings, or States Remembrancer, and the Lord Treaſurer, or Committee,

mittee, of the Revenue Remembrancer.

There hath been anciently very much buſineſſe, and that very various in the Kings Remembrancers Office, relating to the Debters, Tenants, Farmers, Receivers, Accountants, Bayliffs, and Sheriffs, for debts or duties due to the King, *&c.*

In the Treaſurers Remembrancer were wont to be all licences of Alienation pleaded, and all proces to iſſue out for the Fines not paid upon them, and alſo all proces for not payment of reſpite of homage, *&c.* And theſe ſeverall Offices do in many things alſo follow the practiſe of the common Law.

The differences between this court, and the courts of Upper-bench, and common-bench, in point of appearance at the beginning of a Suit, take as follows.

In the Exchequer Chamber, the Proceſs upon Engliſh Bill is *Subpæna*, Attachment, Proclamation and Commiſſion of Rebellion.

If the Defendant appeare, and no Bill be exhibited within foure dayes after the returne of the Proceſs the Defendant may be diſmiſſed with Coſts.

After the Bill is exhibited the Defendant hath eight dayes after his appearance to anſwer, if he anſwer not by that time a rule of foure dayes more is to be given, and if he doe not anſwer by that time, Proceſs of Attachment may be awarded againſt him for his contempt.

If the Defend. demurr or put in an inſufficient Anſwer, the Plain. may put in his exceptions to the ſaid Anſwer, and move to have the Bill, Anſwer, and exceptions or demurrer ſet down to be read in Court, and upon arguing thereof the Court give their opinions, whether ſuch anſwer or demurrer be good or not, and award Coſts accordingly, and if the Anſwer be adjudged inſufficient or the demurrer be overruled, then the Court doth order that the Defendant ſhall put in a further Anſwer. If

If a Bil be exhibited againſt a Peere of the Nation, there muſt be a Letter directed to him under the hands of two of the Barons, requiring his appearance, if he do not appeare, then Proceſs of *Subpœna* and after a *Diſtringas* or Attachment.

If the Bill be againſt a Corporation, Proceſſe of *Diſtringas* muſt be made againſt them, their Anſwer is without oath.

If a Bill or Petition be exbibited againſt the Lord-Protector, The Plaintiff muſt attend the Lord Protectors Atturney with a Copie of it, and procure him to anſwer it, which is without oath.

When the Defendant hath anſwered, the Plaintiff may goe to hearing upon Bill and Anſwer if he will, if he doe reply to the Anſwer, he muſt ſerve the Defendant with a *Subpœna* to rejoyne, upon Affidavit made thereof in the Terme time, if the Defendant do not rejoyne and joyne in Commiſſion for examination of witneſſes within foure dayes after the end of the Terme, the Plaintiff may have a Commiſſion *ex parte* to examine his witneſſes.

After Proceſſe ſerved to rejoyne and affidavit made as aforeſaid, both ſides may examine witneſſes in Court if they will, giving the names of their witneſſes each to other or to their Attorneys in Court, in convenient time before their examination.

Where the Plaintiff hath examined his Witneſſes he may move for Publication, and a rule is given ordinarily of a week in Terme, and if no cauſe be ſhewed according to the rule then Publication to paſſe and the cauſe to be ſet down for a hearing.

When the cauſe is ſet down to be heard the Plaintiff muſt ſerve the Defendant with Proceſſe of *Subpœna* to hear Judgement; And if at the day of hearing the Defendant do not appeare upon oath made of the ſervice of the ſaid *Subpœna*, the Court will cauſe the Defendants

Defendants anſwer to be read, and ſo proceed upon the Plaintiffs Proofes, but the Court doth uſually in ſuch caſe give the Defendant a day to ſhew cauſe why a decree ſhould not be made againſt him.

If the Defendant attend the hearing, and the Plain. make default, the Defendant is diſmiſſed with Coſts. For breach of decrees and other great contempts, the Court doth award Attachments or a Meſſenger or a Serjeant at Armes as the cauſe requireth; And when the Defendant is brought in, he is committed to the Fleete or put in ſecurity to attend until he be examined upon Interrogatories and licenſed by the Court to depart, and if he deny the contempt the Proſecutor may examine Witneſſes to prove it either in Court or by Commiſſion: if by Commiſſion the Defendant may joyne to ſee an indifferent examination, but not to examine unleſſe the Court order it, and if the contempt be proved the Court doth puniſh it with Impriſonment, Fine, and coſts to the Proſecutor; if it be not proved the Defendant is to be diſmiſſed with coſts. In caſe of Ordinary contempts for not appearing or not anſwering, the coſts are ordinary, *viz.* for every Attachment 10 s. for every Commiſſion of Rebellion, 3 l. 6 s. 8 d. which is to be paid before the contempt be diſcharged. In caſe where any Bill of coſts is to be taxed, the Attorney is to ſee it before it be tendred to the Baron to be taxed.

The Fees in Court upon the Proceedings by Engliſh Bill together with ſome other Fees.

For a *Subpœna*,	0 — 2 — 6
For an Attachment,	0 — 2 — 6
For a Proclamtion and Attachment,	0 — 2 — 6

For

For a Commission of Rebellion, to take an Answer, or to examine Witnesses.	0—18—8
For the appearance of every Person.	0— 0—4
Copies of Bils, Answer, *&c.* by the Leafe.	0— 0—8
For Ingrossments by the Leafe,	0— 0—8
The Attorneys Fee for every Terme,	0— 3—4
For all Inrollments for every Roll	0—13—4
For every speciall Writ, *Viz.* Writ of Priviledge, Injunction, *Supersedeas*, Extent, *Scire Facias Fieri facias*, *Certiorari*, *&c.*	0—7—10
For every Writ of *Venire facias* and Writ of Attendance.	0— 2—6
For every *Distringas Iuris.*	0— 4—0
For every rule to plead or Answer.	0— 1—0
Filing each Bill.	0— 2—0
For entring and inrolling a Recognizance.	0— 5—8
Drawing of Orders, Pleas, *&c.* by the Leafe.	0— 1—0
To the Baron for allowing every Bill.	0— 2—0
To the Baron for signing every Common Order	0— 2—0
For signing a decree to each Baron.	0— 6—8
To each of their Clerks	0— 2—0
For every Affidavit sworne before him.	0— 1—0
For every Deed acknowledged before him.	0— 6—8

To his clerke 0—2—0
For every Bill of costs taxed 0—2—0

Where an under-Sheriff is to passe his account in the Exchequer, the charge is as followes; some difference there may be, as the Account may lye, but not much.

l. s. d

FIrst for the Taley upon payment of proffers. 0-2-8
For the entry of the same Taley 0 1-4
Where the Sheriff is dead, for the *Diem clausit extremum*, whereby upon account, execution is to be returned. 13 4
For the Warrant of Attorney 1-0
For the entry thereof 0-8
For the Ushers Fees and the poore mans Box 13-4
To the Controller of the Pipe 16-8
To him more, in regard of, &c. 3-4
To the clerk to the Controller for summons in regard of, &c. 5-0
To the clerke of the Pipe in part of his fee 1-0 0
To the Lord Treasurers Remembrancer 13-4
To the forreigne Opposer for charging of the greene Wax, and making the Scrowle thereof 1 6-8
To him for allowance of the wages of the Iusticei of the Peace. 18 0

To

To the Clerk of the Eſtreats for the Portage of Books. } As you can agree.

To the under Clerk of the Pipe for the like. } In like manner.

For the Preſident of the Foreign Account. } In like manner.

The Fee in regard of the Juſtices of Aſſize for their diet, 10 l.

To the Atturney for the entry thereof, and other Petitions, 2 l.

To the ſaid Attorney for his ordinary Fee, for the whole year to receive the Writs and Precepts, *&c.* 1 l. 6 s. 8 d

To him in regard of, *&c.* for every Term during the account till finiſhed, 3 s. 4 d.

To his Clerk in regard of, *&c.* 10 s.

The copies of the Sheriffs, Seiſures, according to the number of them.

The old Seiſures for each, 1 s.

The new Seiſures for each, 1 s.

To the Clerk in regard of, *&c.* 3 s. 4 d.

To the Remembrancers Office for each thereof, and for joining the tales of Profeſſors, 3 s. 4 d.

On the Lord Treaſurers Remembrancers ſide for the like, 3 s. 4 d.

For allowance of the ſame tales of payments of money in the Receit of the Exchequer, 1 s. 4 d.

For the joining of the ſame.

For allowance of the ſame, 1 s.

For every day that is given to the Sheriff, in reſpect of his Accounts, 6 s. 8 d.

For the entry thereof, 2 s.

To the Uſher for Proclamation, when the Sheriff is ſaid to be caſt out of the Court, 2 s. 6 d.

For the *Quietus eſt*, the making and allowing of the ſame, 1 l.

For the Baron, for his Fees, for taking and allowing of the foreign Accounts, 6 s. 8 d.

To the ſame Baron, for examining the Sheriffs Schedule, 6 s. 8 d.

The ordinary charge of paſſing another Account.

FIrſt, for the Delivery and Receit of three Certificates, 1 s.

For delivery of the Kings part of the Books of Extent to the Auditor, 6 d.

To the Auditors man for a Bag, 6 d.

For a Warrant of Attorney, 8 d.

To the Teller for receiving of the money, and making a Bill thereof, 4 d.

To the Auditors man for allowing the Certificate, 1 s. 6 d.

To the Auditors man for ingroſſing the Accounts, 4 s.

To the Barons man for receiving and allowing the Warrants of Attorney, 2 s.

For entring the Accounts on the Kings Remembrancers ſide, 1 s.

For the like entry with M. 1 s.

For joining of their two Tales, 8 d.

For the *Quietus eſt*, 3 s. 4 d.

For entring of the *Quietus eſt*, 2 s.

For the Attorneys Fee, 3 s. 4 d.

Thus much ſhall ſuffice to have ſpoken of the Exchequer and of his Proceedings, and Fees relating to Sheriffs.

In

Fees in Scacc.

In the next place take the Fees of the Sheriffs themselves, as in the execution of their Office.

IN*primis*, for the return of a *Nichil*, or *Non est inventus*, 4 d

But in *Scire facias* they take, 1 s.

For making a Warrant upon ordinary Process, if it be directed to the ordinary Bailiffs, then for every name, 4 d.

In many Counties they take far more, in some 16 d. in some more.

If the Warrant be directed to a special Bailiff or Bailiffs, then for every name, 2 s.

For the Arrest of every Defendant, 1 s.

This should be paid by the Plaintiff.

For making the Bond of Appearance, wherein the Defendant with his Sureties is bound to appear in Court, at the Day of the Return of the Writ, 4 d.

They take 12 d. and more in some places.

For the return of a *Cepi corpus*, 4 d.

For the return of an *Exigent*, 1 s.

For the return of a Proclamation, 1 s.

For the return of a *Venire facias*, 1 s.

They now take in most places, 2 s.

For the return of a *Habeas corpus*, or *Distringas*, 2 s. 4 d.

For a Replevin either in the County or otherwise, 2 s.

For the return of a *Recordari*, 2 s.

For the return of an *Accedas ad curiam*, 2 s.

For the return of a *Distring. nuper Vicecomitem*, 2 s.

For the allowance of a *Supersedeas*, if it be after the return of the *Exigent*, 1 s.

They pay more now in many Counties.

For the executing of a Writ of Inquiry of Waſte,
For the executing of a Writ of Inquiry of Damages in Treſpaſs,
Treſpaſs upon the Caſe, *&c.*
For the executing of a *Liberate* upon a Statute of Recognizance,
For the Execution of an *Habere facias poſſeſſionem*, or *ſeiſinam* upon an *Ejectione firmæ*, a Writ of Right, of making Partition, *&c.* Dower, *&c.*
} As you can make agreement with the Sheriff.

For the executing of an *Elegit*, and for the Inquiry upon it.

For the executing of a Writ of Forcible Entry, or holding with force, whereupon the party moved, is to be reſtored by the Sheriff to his poſſeſſion.

For the executing of a Writ of Inquiry upon Aſſault and Battery.

Upon a Reſcous, and many other too long here to inſert. The like as before.

For the returning of a *Mandavi Ballivo Libertatis, &c.* 4 d.

Upon the ſerving of an Execution for money, either Debt or Damages.

The Sheriff hath poundage allowed him, and is a general Rule allowed by the Statute in Q. *Eliz.* time. See the Statute what it is.

There are many other Fees incident to the Sheriffs in many Actions, and otherwiſe, which in reſpect the Actions themſelves are moſt of them out of uſe, are not ſo well known; and indeed a man had need be well experienced in the Office of an Under-Sheriff, to know both what Fees he ought to receive, and what he ought in the Exchequer to pay.

The

The Court of Upper Bench comes next to be treated of, wherein we ſhall be the breifer, in reſpect that many Actions treated of at large before, in the Court of common Bench, are here alſo brought and all that differences their proceedings, is for the moſt part matter of form.

THe Court of Upper Bench conſiſts of a chief Juſtice, and three other Judges.

The ſubordinate Officers are as follow,

The chief Clerk of the Court, or Maſter of the Upper Bench Office, whoſe place is executed by his Secondary for the moſt part, or his Clerks under him, who write all Pleadings, and Declarations, and other proceedings upon Record, and are accountable to him for the ſame.

His Deputy alſo ſigns all *Latitats*, which is the firſt Writ whereby a Suit is commenced: and Writs of *Alias*, *Pluries*, *Capias*, *Elegits*, *Habeas corpus*, *Procedendo*, *Habere facias poſſeſſionem*, *Certiorari*, *Diſtringas ballivo*, *Diſtringas* againſt late Sheriffs, *Returno Habendo*, *Capias in withernam*, ſecond deliverance, and ſome others. He alſo keeps the Remembrances of all Records, whereby you may finde out any Record with little trouble, eſpecially if you know the Term when it was entred, and the Attorneys name: and alſo all Writs returned, and *Poſteas*, and Writs of Errour are kept and filed in his Office, and alſo common Bails, and eſpecial Bails, after they are accepted of by the Plaintiff or his Attorney, are likewiſe filed and entred upon Record in his Office.

Secondly, the *Cuſtos Brevium*, his Office is to file

all original Writs, and other Writs, wherein you proceed againſt any perſon you intend to outlaw. And alſo makes up all Records of *Niſi prius* for Trials at the Aſſizes in the ſeveral Countreys, and hath ſeveral Clerks under him, who write the ſame; but many times the Plaintiffs Attorney, or the Defendants Attorney, if you go to trial by *Proviſo*, write the ſame, that he may diſpatch his Clients buſineſs the ſooner, for which you pay for every preſs, which is to contain ſixty lines, 6 s. 6 d.

The Secondary to the chief Clerk, he always attends the ſitting of the Court, for to examine buſineſs, which is referred to him by the Judges; and afterwards makes his report thereof, how the caſe ſtands. He alſo ſigns all Judgments, and taxes coſts thereupon, and gives all Rules to anſwer and reply, and to go to trial by *Proviſo*, and many other, and uſually reſolves all doubts and queſtions of the other Clerks. And if any difference ariſe between any of the Clerks, for matter of practice, it is uſual with them that are fair Practizers, to refer the ſame to him for to determine, and not to trouble the Court with unneceſſary motions, and expend their Clients money in vain, which may that way be ſaved.

The Clerk of the Papers, his Office is to make up all Special Pleadings and Demurrers, which the Plaintiffs Attorney moſt commonly ſpeaks for, and afterwards by virtue of his Office, gives a Rule upon the ſide of the Paper-book, for the Defendants Attorney to bring the ſame to him again, to be entred within four days, or elſe judgment to go by default.

Keeper of the Files of Declarations, with whom after they are ingroſſed in Parchment, and continued on the back, from the Term you declare, till it come to an Iſſue, are filed.

Keeper

Keeper of the Sign and Seal for the Bills of *Middlesex*, who keeps a Book, containing the Plaintiffs and Defendants names, and where you may search for any Appearance, or for any Writ that is taken forth.

The Clerk of the Rules, whose office is to attend the Court, and take short notes of all Rules and Orders that are made in Court (except those which belong to the Crown-office) and afterwards draws the same up, and enters them in a Book at large, for which you pay 8 d. and for the copy of every Rule 4d. if it be of the same Term, otherwise you pay 8d. He also files all *affidavits* that are used in Court, and hath the benefit of making copies of them, for which you pay for each sheet 4d. and with him you are to give all Rules of course, as Rules upon *Cepi corpus*, *Habeas corpus*, for a *Procedendo*, *postea*, Writs of Inquiry, and such like.

Phillizors. one for each County in *England*, who make out all Writs, wherein you intend to proceed by Original, and so to the Outlawry, except the Original it self, which you are to bespeak of the Cursitor of the County, where you intend to lay your Action, in such manner as you bespeak Originals, which are made in the Common Pleas. And they have the benefit of all Writs and Entries thereupon, and allow the chief Clerk nothing for the same.

The Marshal of the Upper Bench, who hath the custody of all Prisoners, who are sued in the Court, like to the Guardian or Warden of the *Fleet*, which is a Prison properly belonging to the common Bench and Chancery; and every one that is sued and arrested in this Court of Upper Bench is supposed to be in custody: for you cannot declare against any man, who is arrested upon mean Process, in any County or City, and he remain in Prison there, for

want of Bail, untill he be removed by a *Habeas corpus*, and always either he himſelf, or his Deputy, or Servants, attend the Court for that purpoſe, to take Priſoners, who are committed to their cuſtody.

Clerk of the Errours, he allows all Writs of Errour, and makes *Superſedeas* thereupon, into what County you pleaſe to have them.

Criers, who always attend upon the Court, either to call Non-ſuits, give Oaths to Witneſſes, and Jury-men of Trials, or to any others whom the Judg ſhall direct, and at the end of every Term they do adjourn the Court.

Porter, who is to bring the Records out of the Office, when they are to be uſed in Court.

This Court of Upper Bench holds plea in all Actions of Debt, Detinue, Covenant, Account, and all Actions of the Caſe, either upon Promiſes, or for ſcandalous words, or for ſpecial nuſance, *&c.* Trover and Converſion, and many other like, *&c.*

The courſe of proceeding there is by way of *Latitat*, as their firſt Proceſs, if the Action to be brought, or the party to be arreſted in any other County than *Middleſex*.

If in *Middleſex*, then you take out a Bill of *Middleſex*, with any Clerk of this Office, for which you pay 1 s. 6 d. and then you are to carry it to the under Sheriff of *Middleſex* his Office, who is to make out a Warrant upon it, for which he hath 4 d. and then you imploy what Bailiff you think fit, for the Arreſt, except your Warrant be directed to the Bailiff of any particular Liberty, and then you are to imploy one of his Bailiffs.

If it be a *Latitat*, it ſuppoſeth a Bill of *Middleſex*, and that the party cannot be found in the County of *Middleſex*, as it appears by the later end of the Writ, where it is ſaid, the Sheriff of *Middleſex* returns that

that he is not found within his Bailiwick, but that he lies hidden in another County, and therefore command is given to the Sheriff of that other county, that he take him, *&c.*

This Writ or Bill of *Middlesex*. I conceive, is in the nature of the Original in the common Pleas, which warrants the *Capias*, and haply may have very anciently been in use for that purpose, for that otherwise 'twere vain to insert those words of the Sheriff of *Middlesex*.

The Form of a Latitat *is as followeth.*

Latitat.

THe K. *eepers of the Liberty of* England, *by Authority of Parliament, to the Sheriff of* E. *greeting Whereas we have lately commanded the Sheriff of the County of* Middlesex, *that he should take* A.B. *if he might be found in his Bailiwick, and him safely keep, so that he might have his Body before us, in the Upper Bench at* Westminster, *the Thursday next after fifteen days of* Easter, *to answer* C.D. *in a Plea of Trespass; And the said Sheriff of* Middlesex, *at that day returned unto us, that the said* A.B. *is not found in his Bailiwick; whereupon on the behalf of the aforesaid* C.D. *in the Court before us, it is sufficiently testified, that the said* A.B. *doth lurk and skulk in your County; therefore we command you, that you take him, if he shall be found within your Bailiwick, and him safely keep, so that you may have his Body before us in the Upper Bench at* Westminster, *on Wednesday next after three weeks of* Easter, *to answer the said* C.D. *in the Plea aforesaid, and that you have there then this Writ; Witness* H. Rolle *at* Westminster, *the seventeenth day of* April, *in the year of our Lord God* 1651.

This

This Writ is usually 4 s. 1 d. some take 5 s. 1 d. And if you cannot arrest the party upon this, then you may have it renewed as followeth.

Alias Capias.

THe *Keepers*, &c. *to the Sheriff of* L. *greeting. We command you, as formerly we commanded you, that you take* A. B. *if he shall be found within your Bailiwick, and him safely keep, so that you may have his Body before us in the Upper Bench at* Westminster, *on Saturday next after the Morrow of the Ascension of our Lord, to answer* C. D. *in a Plea of Trespass. And that you have there then this writ; witness* H. Rolle *at* Westminster, *&c.* Wightwick.

This Writ 1 s. 1 d. but they usually take 2 s. 1 d.

The Plures Capias.

THe *Keepers*, &c. *To the Sheriff* &c. *We command you, as many times we have commanded you, that you take* A.B. &c. *as in the Writ next before.*

This Writ is likewise 1s. 1d. but they take 2s. 1d.

Bill of Middlesex.

M*iddlesex ss.* It is commanded to the Sheriff, that he take *A. B.* if, *&c.* and him safely, *&c.* So that he have his Body before the Keepers of the Liberty of *England*, by authority of Parliament in the Upper Bench at *Westminster*, on Wednesday next after the Moneth of *Easter*, to answer *C. D.* of a Plea of Trespass, and that he have here then this Precept, *&c.* by Bill *Wightwick.*

These Writs you may have renewed every Term, untill

untill you get the party to be arreſted. But if the *Latitat* remain unrenewed for five Terms, after you have taken it out, then you muſt have a *Latitat de novo*, for that you cannot renew the old.

Upon any of theſe Proceſſes, if any of the Parties to be arreſted, dwell within a Liberty, you muſt get the Sheriff to return a *Mandabo Ballivo* to your Proceſs, and upon that the courſe is to have a *Non omittas, &c.* For which you pay 2 s. 4 d.

Where upon this, or any the other Writs, the party or parties be arreſted, and have put in Bond for his appearance to the Sheriff, you muſt pay the Sheriff 4 d. and he will return you a *Cepi corpus*, upon which if the party do not appear at the return of the Writ, you may give the Sheriff a Rule to bring in his Body, on pain of 40 s. *&c.* which coſts 4 d. and then if he do not come in and appear, you may have a *Habeas corpus* upon the *Cepi corpus*, which coſts 2 s. 4 d. If the Sheriff will not return this Writ of *Habeas*, you may amerce him as before; if he doth return the Writ, and brings not in the Body, he can return nothing but a *Languidus in perſona*, and upon that you may have a *Duces tecum licet languidus, &c.* upon the like price; or elſe after the party is arreſted, you may have a *Habeas corpus*.

At the Return of all or any of theſe you may amerce the Sheriff, and he ſhall pay it after thoſe Rules given in the Upper Bench.

If you will extreat your Amerciaments into the Crown-office, the charge of every Rule extreated is 2 s. 4 d. unextreated 4 d. and in this courſe you may both amerce the Sheriff, and proſecute till ſuch time as he doth appear, but if there be any great Amerciament, the Defendant will appear for fear the Sheriff ſue his Bond: And after the Amerciaments are returned into the Crown-Office, if they be

be not certified and returned into the Exchequer, which is once in every half year, where they are extreated before that time, if you be ſued upon the Sheriffs Bond, you may upon motion of the Court, if the Plaintiffs Attorney (to whoſe Client the Sheriffs Bond is commonly aſſigned) will not conſent otherwiſe, that you are content to appear, as of the ſame Term the firſt Writ was returnable; and to accept of a Declaration, and not to delay the Plaintiff in his Suit: the Court will uſually order the Suit upon the Sheriffs Bond to ſtay, or if the Amerciaments be extreated, then upon the ſame offer, and alſo to take off thoſe Amerciaments, the Court will order the like.

And when any one intends to appear, he muſt file a Bail with the Maſter of the Office, fairly written in Parchment, the form whereof is as follows.

If it be a common Bail thus,

A. B. *of* C. *in the County of* D. *Yeoman, delivered into Bail upon a* Cepi corpus.

To John Doe *of* London, *Yeoman, and* Richard Roe *of the ſame, Yeoman, at the Suit of* E. F.

If ſpecial Bail upon a *Habeas corpus*, then you muſt ſay (ſuch a one) naming the Plaintiff, is delivered into Bail upon a *Habeas corpus*, to ſuch perſons naming his Bail, (inſtead of *John Doe*, and *Richard Roe*) at the Suit of the Plaintiff in the Plaint not naming the Defendant, as in the common Bail, which muſt alſo be filed with the Maſter of the Office.

In

In what cases you are to require, and may stand upon good Bail.

IF the Defendant do appear, and he stand indebted to your Client, either by Bond, Bill, or otherwise, to the value of 20 l. or 10 l. you may force him to put in good Bail, if you mistrust his sufficiency.

But if it be in any Action of the Case, for words, though the party be nothing worth, and you are likely to recover great Damages, yet can you very hardly hold him to good Bail: yet in some cases it hath been observed, that good Bail was required, as where one had made a Libell against another, who was a Magistrate.

In any Action of *Ejectione firmæ*, and in an Action of Trespass, good Bail is not insisted on, nor required, except in some special cases, then the Court will order that there be special Bail.

Nor is there good Bail required against Executors or Administrators, in any Action brought against them, unless in such case where you can directly prove they have wasted the Goods of the Testator.

If Bail be put in, either common or special, at another mans Suit, a stranger may upon this Bail put in a Declaration, but then he must declare of the same Term the Bail was put in, which is not used in the common Bench. But the party at whose Suit the Defendant was arrested, may declare the next Term after the Defendants appearance upon the Bail.

But if it be especial Bail that he put in, no stranger shall take the benefit of it, although he declare of the same Term.

If the Defendant appear in his proper person, you

you muſt declare within three days, otherwiſe he will have coſts.

If you have declared, and do not call for anſwer, nor enter the Action within three Terms after the appearance of the Defendant, the Plaintiff ſhall be non-ſuited, and the Defendant ſhall have coſts.

And if you arreſt one in the County, upon mean Proceſs, and he is in the Sheriffs cuſtody there for want of Bail, for the ſpace of three Terms, and you do not remove him into the cuſtody of the Marſhal, where he muſt be, before you can declare againſt him, the party arreſted may have a *Superſedeas*, and file common Bail.

The Declarations are uſually drawn by the Clerks of the Office, for they that are Clerks of the Office are to do the buſineſs of thoſe which are Attorneys at large, and their names are onely uſed as Attorneys, but thoſe Clerks are in right of their being Clerks of the Office, Attoneys of the Court.

Their manner of practice is ſomething different, in reſpect of the delivery of Declarations, from that in the common Bench.

In the common Bench, the Plaintiffs Attorney or Clerk, hath the benefit of both the Copies of the Declaration, both on the part of the Plaintiff and Defendant.

But in the Upper Bench, the Declaration being drawn by the Plaintiffs Clerk, the Defendants Clerk calleth for it, or elſe it is delivered unto him, and he maketh a Copy of it, and hath the benefit of it, and then the next Term after, or ſo ſoon as the Plaintiffs Clerk calleth for anſwer, is to plead or to confeſs the Action, or let it go by default, *&c.*

Their Declarations that are drawn, they ingroſs ſeverally in pieces of Parchment, and upon the back of them they enter their continuances, from the

Term

Term that is within written, unto the very Term that they either confeſs the Action, or plead to Iſſue, and that the Iſſue be entred upon Record, and after Iſſue is joined, many times they defer the entring of the ſame, till the cauſe be tried, which is otherwiſe in the common Bench, which is beneficial both to the Plaintiff and Defendant, being they may in the mean time agree the buſineſs, and ſo ſave that charge.

In their Declarations they begin with the name of the Plaintiff, and ſay, that he complains of the Defendant, very ſeldom naming of what place, *&c.* unleſs upon a Bond where the *Alius dictus* muſt be obſerved, in the cuſtody of the Marſhal, *&c.* for ſo the Declaration ſuppoſeth every perſon they declare againſt.

When they come to mention the Bond, Indenture, or Bill, if in an Action brought upon any Specialty, there they have (*Profert hic in Curia, &c.*) in the middle of their Declarations, whereas in the Common Pleas they conclude their Declarations with it; at the cloſe of their Declarations they add underneath,

Pledges of proſecuting { John Doe, / Richard Roe.

Next that they add { J. B. *for the Plaintiff.* / C. B. *for the Defendant.*

THe many and ſeveral Actions of the Caſe before mentioned in the practice of the Common Pleas, are much uſed likewiſe in the practice of this Court, and in thoſe Actions they may proceed to Outlawry by Original, and ſo through their Phillizers

zers Office, in which caſes, or in Treſpaſs, or Treſpaſs of Aſſault and Battery, if a man be outlawed in that Court, he is half undone, if he be a poor man; for beſides that it coſts him 6 l. 13 s. 4 d. or upwards, to reverſe the Outlawry, he muſt although he live 200, or 150. miles diſtant from *London*, come in perſon (if he be able) to reverſe it, and beſides muſt procure good Bail; and in caſe he be impotent that he cannot travel, then there muſt be *Affidavit* made thereof before a Judg, which done, he may reverſe it.

One may proceed to Outlawry in this Court, as well as in the Common Pleas, in all caſes, except in theſe four.

1. Debt. 2. Detinue. 3. Covenant. 4. Account; but it is ſeldom made uſe of but upon good occaſion, that is to ſay, when the Defendant hath a good perſonal Eſtate in Debts, Cattel, or Stock in his Grounds, and is hard to be taken and arreſted; for otherwiſe Outlawries are but meer Scare-crows, to diſable both the Plaintiff and Defendant, in puting them to unneceſſary charge, whereas upon a *Latitat* you may procure a man to be arreſted preſently, and make him put in good Bail, which is all you can do upon an Outlawry, after three Terms ſpace. And beſide, upon a *Latitat* you may declare againſt the Defendant, in as many Actions as you pleaſe; whereas in the Common Pleas, you muſt have for every Action, one Original, and if it be a Debt which exceeds 40 l. you muſt pay as before is told you, 6 s. 8 d. fine, and if 100 l. you pay 10 s. fine, and ſo proportionably; and as ſoon as you beſpeak your Original, before you have any benefit of your Suit, whereas no fine at all is paid in the Upper Bench, and in the Upper Bench the Plaintiff hath longer time to declare, than is allowed in the com-

Common Pleas; (if the Defendant do not appear in perſon) and then you muſt declare within three days after.

When the Plaintiff and Defendant are at iſſue, the Defendants Clerk hath the benefit (as before of making the Declaration) ſo of making the Copy of the Iſſue for the Defendant, which is otherwiſe uſed in the common Bench.

If there be eſpecial Pleadings in any Action by the Plaintiff or Defendant which either comes to Iſſue, or that there be a Demurrer, then they carry the whole Book to the Clerk of the Papers, who giveth a Rule to the Defendant in the Margin of the Book, to joyn in Iſſue or in Demurrer, and he maketh up the Books, and is paid eight pence a ſheet for the ſame, which is otherwiſe in the common Pleas for there the Plaintiffs Attorney hath that benefit.

The Clerks of the Office are to account with the Maſter of the Office, after the end of every Term, for all Writs or Entries, *&c.* which they have had of that Term ſo proceeding.

After Verdicts, and that they have the *Poſteas* returned, and that the Maſter of the Office hath ſigned Coſts (which he doth as he doth all other buſineſs by his Secondary) then they enter up their Judgments, every Clerk his own, and ſo he maketh out his Executions, either againſt the Body, which is commonly called a *Capias ad ſatisfaciend.* or elſe againſt the Goods, which is commonly called a *Fieri facias*, or elſe againſt the Lands and Goods, which is called an *Elegit*; but if you once charge the Body in Execution, you have no remedy againſt the Goods or Lands.

If it be an Iſſue of any former Term, that is entred upon the Roll, or of the ſame Term, then if they will have a Record of *Niſi prius*, they muſt have

it made by the *Custos Brevium* of that Court, who keepeth particular Clerks for that purpose, for they are to pay him for them, although for expedition the Attorney or Clerk most usually makes them himself, and then the *Custos Brevium* seals them.

This Court of Upper Bench holdeth Pleas of the Crown, and to that purpose there is an Office called the Crown Office, and the Master of it called the Clerk of the Crown; and here may be brought Inditements for all manner of Treasons, Murder, Felony, Breaches of the Peace by Battery, *&c* Breach of the good Behaviour, for Perjury, all publick Nusances, Appeals in case of Murder may come, and here likewise Informations upon penal Statutes are brought, and here issues out *Certioraries*, to remove Inditements from private Sessions, and hither are all Convicts certified.

They have belonging to this Office a Secondary, who sits in Court, and takes notice of what Rules are made on the Crown side. They have likewise several Attorneys of that Office who have the business of the Countrey, as to that Office divided amongst them, who intermeddle not with any thing relating to the Court, other than in their own Office.

How to sue upon a Statute Staple.

IF you would sue forth Execution upon a Statute Staple go to the Clerk of the Statutes, and shew him your Statute, and he will make you thereupon a Certificate, which being made and sealed by him, carry it to the Clerk of the Crown, (which is the Office whence all Patents special issue forth) and upon the delivery of the Certificate to him, he is to make you your Extent, which you must after deliver

unto

unto the Sheriff of the County where the Land lies, who will by virtue thereof impannel a Jury to inquire and extend Lands, Goods, and Chattels of the Cognizor, and may by virtue thereof apprehend the Body; if, &c. The Lands being thus extended into the Kings hands, the Sheriff may keep untill you bring your *Deliberate*, which you are to have (upon your Extent returned) from one of the Clerks of the Petty Bag; but it behoveth you to be very careful how you sue forth of your *Liberate*, and that you do it not before you have fully informed your self what Lands or Goods there are in any other County, that you may extend, whereby fully to satisfie your Statute; for if you once execute your *Liberate* upon that which was first extended, you shall never have execution of more, although you make an after-discovery. And you are to deliver your Statute into the Petty Bag Office, before they will make you your *Liberate*.

How to sue upon a Recognizance acknowledged before one of the Masters of the Chancery.

WHere you will sue upon a Recognizance, you must bring it to one of the Clerks of the Petty Bag Office in Chancery, and he will make you out two *Scire facias*, directed to the Sheriff of *Middlesex*.

The first returnable of a Return past, and the other bearing *Teste* of the Return of the former; and returnable at a day to come, which you must get the Sheriff of *Middlesex* to return, & having them returned, you are to bring them back to the Clerk of the

Petty Bag Office, and then retain one of the Clerks for you, and give the Defendant day to appear.

At which day, if he appear, the Plaintiff is to declare, and the Defendant is to anſwer, and ſo proceed to Iſſue, and upon the Iſſue joyned, you may have the whole Proceedings ingroſſed in Parchment, and by *Mittimus* ſent into the Upper Bench or Common Pleas, or elſe the Lord Keeper, or Lords Commiſſioners for the Great Seal, for the time being, may deliver it ſo ingroſſed into either Court without *Mittimus*, which is ſaid to be delivered, *Propria ſua manu*, where the Iſſue ſhall be tried, and Judgment given, for in the Chancery no Iſſue can be tried. But if the Defendant appear not, you ſhall have Execution by Default, which courſe is indeed moſt uſual.

How to prove a Will, in Caſe the Party be preſent, the Inventory not exceeding fourty pounds.

FIrſt, you are to bring in your Will, under the hand of the Teſtator, and Witneſſes names, and take Oath, that that is the laſt Will for ought you know; and in caſe the Party live in the Countrey, there muſt a Commiſſion iſſue forth to that purpoſe, which being returned, you muſt retain a Proctor, and he will ſue it out for you, the charge follows, but is alterable according to the length or ſhortneſs of the Will.

	l.	s.	d.
Inprimis, for regiſtring of the Will,		1.	6.
For ingroſſing the Will,		6.	0.
For the Regiſter, for his hand to the ſame,		12.	0.

For

For the Seal and Probate of the Will, 6.8.
The Proctor's Fee and the Prox. } 4.8.
For proving the Will, }
For ingrossing the Inventory, and exhibiting the same, } according as you can agree.

These Fees would be far less, could the Registers Clerks be confined to walk by what the Statute directs, and in some very short Wills they are less than what is above set down.

The Dutchy Court.

THis Court before the Sale formerly made, and the large Grants of the Dutchy Lands, was much used in relation to Suits between the Tenants of those Lands, and also against accountants and others for the Rents and Profits of the Lands, and is a Court of Record, wherein are Pleas both real, and personal, as also mixt pleadings, relating to the Dutchy Lands.

The Chancellour of the Dutchy is the chief Judg of this Court, and next to him the Attorney of the said Court, who in all difficult cases in point of Law, is usually assisted by two Judges of the common Law out of one Court or other, to decide the matter or question in Law.

There is one chief Clerk or Register of the Court, to whose Office it properly belongs to have the keeping of all the Rolls and Records of the Court, and also of the Proceedings therein.

There are divers Auditors of this Court, of which there are two more especial than the rest. The one whereof, his Office extends to all the Dutchy Lands on this side *Trent*; and the other for the Lands beyond *Trent*. To those Auditours doth belong the keep-

ing of the Kings Evidence; as Leaſes and Grants of the Dutchy-land, as well of the Poſſeſſions and Copy-hold, as Fee-ſimple and Fee-farm.

Although there be divers Surveyors for the Dutchy-land, for the ſurveying of it, yet do they not keep any Record to that purpoſe, unleſs ſome ſhort draughts of their own framing.

Thus much for Courts of Record at *Weſtminſter*, which are for the common Law practice; come we now to the Court of Equity, which in many caſes abates of the rigour and ſeverity of the common Law, and is called,

The high Court of Chancery.

IN this Court the Lord Chancellour or Lord Keeper of the Great Seal, were formerly, and now the Commiſſioners of the Great Seal are the chief Judges; and in this Court, they, and in their abſence, the Maſter of the Rolls, do make Orders and Decrees.

The ſubordinate Officers of this Court are many.

The twelve Maſters in ordinary, which are Aſſiſtants to the Commiſſioners, and ſit with them, and to whom References are made, and before whom *Affidavits* are made, and Deeds acknowledged, and Recognizances, *&c.*

The Regiſter of the Court who hath divers under him, that ſit in Court and take notice of all Orders, Decrees made in Court, and accordingly, afterwards draw up theſe Orders, and enter them and file them.

The ſix Clerks, in whoſe Office all proceedings upon Bill, and anſwer unto the very Decree, and after Decree are acted, and from whom likewiſe iſſue ſome

Pa-

Patents as for pardon of men for chance-meddley, Patents for Embaſſadours, Commiſſions for Bankrupts; and theſe by their Clerks, of which each ſix Clerk keeps a ſet number.

The Curſitors of the Court, who were incorporated by Q. *Elizabeth*, by the name of the four and twenty Curſitors, amongſt whom the buſineſs that lies in the ſeveral Shires, is ſeverally diſtributed. Theſe make all original Writs in the Chancery, which are returnable in the Common Pleas, and all Writs of Entry and Covenant.

The Regiſter is a place of great note in this Court, and hath ſeveral Regiſters under him, who ſit in Court by their turns, and take notice of all Orders and Decrees made in Court, and accordingly draw up the Orders, to which you muſt have a Regiſters hand, and then you muſt enter it there, and in that Office likewiſe they file the Reports of the Maſters. The Maſters of the *Sub pœna* Office. The Clerk of the *Affidavits*, where you file ſuch *Affidavits* as you uſe in Court.

The Clerks of the Petty Bag, who have many Clerks under them, and theſe Clerks have much variety of buſineſs that comes through their hands, and requires very much knowledg and experience for the managing of.

This Office hath the making out of all Writs of Summons to the Parliament.

To this Office are all Offices that are found *poſt mortem*, brought to be filed.

In this Office are all Pleadings of the Chancery concerning the validity of any Patent or other thing whatſoever, which paſſeth the Great Seal.

And theſe Pleadings were formerly in *Latine*, although moſt of the reſt of their Proceedings were in *Engliſh*.

If any queſtion ariſe about the acknowledgment of any private Deed between Subjects, which is acknowledged in Chancery, before the Lord Keeper, the Maſter of the Rolls, or any of the Maſters in Chancery.

All Statutes and Recognizances taken before any Officers of this Court, to that purpoſe deputed, are here proſecuted and tranſmitted hither.

In theſe Offices are all Suits for or againſt any perſon privileged in the Court.

It is likewiſe a hand whereby to tranſmit divers things, from the riding Clerk; and the Inrolment Office, to the Chapel of the Rolls.

The Examiners are Officers of this Court, who take the Depoſitions of Witneſſes, & are to examine them, and to make out Copies of the Depoſitions.

There are likewiſe Clerks of the Rolls, who ſit conſtantly in the Rolls to make Searches for Deeds, Offices, *&c.* and to make out Copies.

The Uſher of the Court, who hath the receiving and cuſtody of all Moneys, ordered to be depoſited in Court, and payeth it back again by Order.

The Serjeant at Arms who carrieth the Mace before the Commiſſioners, and to whom any Perſons ſtanding in contempt are brought up by his Subſtitutes as Priſoners.

The Warden of the *Fleet* attends likewiſe this Court, to receive ſuch Priſoners as ſtand committed by the Court.

This Court conſiſts of a double power, ordinary, as in the caſe of *Scire facias*, to repeal Patents in caſes of Traverſe, Endowment of a Woman, and the like, and herein the Court is limited, and confined to the Rules uſed in the Common Law.

The other is extraordinary, and unlimited, which is in caſes of equity, wherein relief is to be had by a

Suit

Suit here, by way of Bill and Anſwer.

By the power of this Court, are iſſued forth Commiſſions for charitable uſes, Bankrupts, and Sewers.

Here in this Court in ſome caſes, Commiſſions have been granted to examine Waſts, to ſet out meer ways for paſſages; to prove a Childe legitimate, to prove Cuſtomes, and to examine Witneſſes, *in perpetuam rei memoriam.*

It proceeds by way of Bill and Anſwer, in many caſes this Court will give relief againſt, beſides, and beyond the Rules of the common Law, ſome whereof follow. As where a charge lies upon one man alone, by the common Law, where in equity others ought to contribute a part to this charge, here in this caſe the Court will give relief.

So likewiſe will the Court relieve one againſt another who had falſified and broken his truſt with him.

It gives relief againſt the extremity of an Engagement, where either the Engagement is without any conſideration, unreaſonable, diſhoneſt, or diſcharged; or where there hath been either fraud, force, or the like, uſed to procure the thing to be done.

Where by a Law a man cannot be compelled to perform an agreement, this inforces it.

It inforces the Inrolment of a Deed, if need be.

This Court will reſtrain other Courts that take upon them a greater juriſdiction than properly they have, and removes the Suit into this Court, which is done by *Certiorari.*

This Court will reduce the general cuſtomes of a Mannour to a certainty between the Lord and Tenants, or the Tenants themſelves.

It ſerves to recover Land or Money given to charitable pious uſes, and miſimployed.

It inforces the Husband to give his Wife Alimony.

Where Creditors are unreasonable, this Court inforceth them to take a reasonable composition of the Debtor, he being disabled.

Where Freehold or Copihold Land are confounded, it will distinguish it, or if it be lost, it will give a recompence for it.

This Court will ascertain the Fines of Copiholders.

This Court (where Executors or others have money in their hands there to ly long) inforces them to give security or interest for it.

This Court will inforce the recovery of a Legacy, or force the performance of a Will.

It serves for the recovery of ones Land, debt or duty, although he have lost the Conveyances or Writings, by which he should make his title to it, or otherwise be without remedy for it.

It inforces him that hath sold Land, and taken money for it, assured by defective conveyance, to make the same perfect and good.

It will inforce a Tenant to attorn, to perfect an Assurance.

In these and such like cases this Court of Chancery doth always, or for the most part, give relief, as you may see more at large in *Tothills* and *Caries* Reports.

In some other special cases likewise this Court doth exercise a power, as to prevent the disinheritance of an Heir, or restore it.

To avoid the extinguishment or suspension of rent or common.

To prevent an occupancy.

To avoid the bar of an Action, by the Statute of 21 *Jac.* of Limitations.

It

It will order the incloſure of Grounds or Lands that are common, give relief againſt the turning of a Water-courſe from a Mill, ſo as there be any ſpecial circumſtance in the caſe, otherwiſe it is very ſhy and tender in making Orders in them.

But regularly this Court doth not give relief where the ſubſtance of the Suit by Bill and Anſwer tends to the overthrow of an Act of Parliament, made for publick peace and repoſe, or to the overthrowing any fundamental point of the common Law, or to overthrow and take from other Courts their peculiar juriſdiction, or the like.

In all ſuch caſes wherein the Plaintiff hath his remedy at common Law for the very ſame things, he ſhall not be relieved here.

Where a Promiſe is made to aſſure Land for a certain ſum of money, in this caſe the Party may either ſue at Law for Damages, or in Chancery for the Land it ſelf.

The like caſe for a Nuſance, where the Law gives me Damages, I may ſue here to have the Nuſance removed, or the thing it ſelf reſtored: and yet there may be ſome ſpecial circumſtances in the caſe, which may make the Court retain it; as where a Suit is grounded upon a Will Nuncupative, Leaſe Parol, or long Leaſe, to avoid Wardſhip, or to eſtabliſh Perpetuities, or to defeat Purchaſors, or for Brokeage, or rewards to make marriages, or for bargains at play, or wagers, for bargains for Offices againſt the Statute of 2 *Edward* the ſixth, or upon contracts for Uſury or Simony, or if it be for Land not worth fourty ſhillings a year, or for any thing elſe under the value of ten pounds, thoſe are regularly diſallowed here; and ſometimes upon notice taken hereof by the Court, upon motion or upon *Affidavit* onely, before the Cauſe comes to hearing, it is dimiſſed, but

if

if it ſtay longer till it comes to hearing, it is then diſmiſſed; yet there are ſome circumſtances that may make ſome of theſe retainable, as where the Suit for ſo ſmall a matter be for the Poor of a Pariſh, or the like.

In ſuch like caſes as theſe the matter being heard upon Bill and Anſwer, and the proofs of Witneſſes, the Court may (without any regard to form or miſpleading, ſo as the truth, *viis & modis*, may be diſcovered) proceed to ſentence it according to equity and good conſcience.

All perſons able in Law to ſue or be ſued, may in this Court ſue or be ſued.

Relief may be and is often given againſt or for an Infant in this Court, touching which matter theſe things are to be known;

As to Suits againſt an Infant.

Firſt, an Infant hath been compelled to anſwer a Bill in this Court, as in *Hares* caſe, *Hil.* 3 *Jac.* and *Mores* caſe, 11 *Car. Tothill* 108, 109. And being but twelve years old was bound by a Decree of this Court, 37 *Eliz. Wadhams* caſe, and upon a Review decreed again, *Crommells* caſe, *Mich.* 7 *Car.* and was committed to the *Fleet* for diſobeying a Decree, 12 *Eliz. Tothill* 108, 139.

Secondly, this Court may alſo if it pleaſeth appoint an Infant Defendant, a Guardian to defend his Suit, *Caries* Reports 38.

Thirdly, a Copihold was ſurrendred to the uſe of an Infant; for the Infant to pay an annuity to another at his full age, which he refuſed; it was decreed he ſhould pay it, and the arrears thereof, *Sawyers* caſe, 9 *Eliz. Tothill* 107.

Fourthly, *Young* purchaſed Lands in the name of

of *Maſon*, in truſt for himſelf and his Heirs, and dies not declaring any determination of his truſt, procures *Maſon* to convey it to him being of kin, he conveys it to Infants, *C.* ſues here as next Heir, the Court agrees, that if the benefit of the truſt did belong to *C.* that it ſhall be decreed to him, during the minority, and then that the Infants ſhall convey it. See *Caries* Reports 30.

Fifthly, a Mother conveyed her Leaſe to her Son in truſt, and after the Son conveyed it to his children Infants, and it was decreed againſt the Father and children, becauſe done without any conſideration, *Tothill* 98.

Sixthly, between the date and ſealing of the Conveyance of Land ſold, the Lord *Morley* paſſed it to an Infant, and it was decreed againſt the Infant and him both, 36 *Eliz.* Lady *Ruſſels* caſe.

Seventhly, the Father being Tenant in Tail, ſells his intailed Land, and leaves as much Free-land to deſcend to an Infant, the Court ordered when he comes of age to pay the money given for the Land according to his Fathers Will, or elſe that the Purchaſer ſhall have the Free-land, *Tothill* 184.

Eighthly, an Infant may by this Court be compelled to give a diſcharge of money due to, and received by him, as in *Rayners* caſe, 13 *Car.*

Ninthly, where one made an Infant Executor to prevent the payment of his Debts, and he was ordered by the Court to pay them notwithſtanding, *Mich.* 9 *Jac. Tothill* 108.

Tenthly, an Infant may in ſome ſpecial caſes by this Court be concluded by his agreement.

But regularly if an Infant be twenty years of age, and make a contract never ſo much to his advantage, the Court will not conclude him, nor will the Court decree againſt him by his conſent or the conſent

ſent of his Parents, but in ſome ſpecial caſes upon the Merit of the cauſe, *Mich.* 8 *Car.* in Chancery.

A Father being about to convey ſome of his Land to his younger Son, and the eldeſt Son promiſed to give the younger Son a hundred pounds if the Father would forbear it; in this caſe the eldeſt Son being an Infant was ordered to ſtand to it. See *Stiles* his caſe, 2 *Car. Tothill* 95.

Eleventhly, a Surrender was made of a Copihold by an Infant, to the uſe of *J. S.* for money paid, and no help could be had here, *Hughs* caſe, *Tothill* 180.

Twelfthly, if I take Bonds for my money in my childrens name that are Infants, I may releaſe the Debts, and this Court will allow it, and forbid any Suit upon them.

As to Suits by or for an Infant.

Firſt, he ſhall have the ſame relief upon a Breach of Truſt, Fraud, or the like in this Court, as another man may have, notwithſtanding his minority, *Tothill* 108.

Secondly, he may ſue by himſelf or his Procheinamy or Guardian, as the Court will order.

Relief is often given by this Court, againſt, or for a woman under covert Baron, touching which, theſe things following are to be known.

As to Suits againſt her.

1. She ſhall be compelled to anſwer with, or without her Husband. See *Caries Reports*, 100, 101. *Tothill* 95, & 96. But more eſpecially, if he be out of

of the Land: and she shall be bound by the Decree of this Court, as in *Westdeans* case *Toth.* 93. and she may be committed till she do obey it, as in *Stywards* case.

2. The Husband and Wife were ordered to levy a Fine, and perfect Assurances, *Toth.* 93.

3. The Husband was ordered to give security that the Wife should release her Right to Land. See *Toth.* 92.

4. An agreement in some cases will here be ordered, to conclude her where the merit of the cause requireth it. As if a man have two Tenements of his wifes Land, and they agree with the Tenant, that if he will surrender the one, he shall have three Lives in the other, and he doth so, and the Husband dy, the Wife was ordered to make it good. See *Irelands* case 37 *Eliz. Toth.* 91. but regularly it is otherwise; and therefore where she hath Land with other Coheirs, and she with the consent of her Husband, agree to take a thousand pounds, to release her Right, the Judges did certifie she was not to be concluded, *Trin.* 7 *Jac. Dockwrays* case *Toth.* 98. yet in 10 *Jac. Randalls* case was, that a single woman did agree, and after her Marriage subscribed her name with her Husband to a later agreement, and was concluded by this later, by the Courts Order, *Toth.* 96.

But in *Slaters* case, 37 *Eliz. Toth.* 92. She and her Husband did article to forgo her Jointure, for other recompence, and a Decree was made thereupon (but without her consent) in her Husbands lifetime, and after his death the Court will not binde her to this agreement.

5. A Lease of Land was made to friends, to her use, to begin after her Husbands death, and they two levy a Fine of the Lands, this will not bar them in

in equity, *Trin.* 15 *Car.* *Liſters* caſe.

A. made over his Leaſe for years, to the uſe of *C.* his Wife, after he and his Wife ſold the Land, and levied a Fine of it to *D.* The Court ordered that the Purchaſer ſhould enjoy the Land againſt the Wife, after the Husbands death, 2 *Car.*

One was ſeiſed of Land to the uſe of a Feme ſole, who after took a Husband, and the Husband ſold the Land, the Wife had the Money, and ſhe and her Husband deſired the Feoffee in truſt to convey it, and he doth ſo, yet it ſeems the Court of Chancery will not bar her of the Land, after her Husbands death.

The Court ordered the Husband and Wife to levy a Fine of morgaged Lands, ſetled in her; the Lady *Griffins* caſe, 4 *Car.*

One did convey Land to the Husband in truſt, and he took the profit and left it with his Wife, and ſhe married again; they two were ſued in this Court, and yet neither as Executor nor Adminiſtrator to her firſt Husband, as in *Acklands* caſe, *Tothill* 106.

As to Suits by and for her.

In ſome caſes ſhe may ſue her Husband, as for Alimony or maintenance, where they be parted, but ordinarily ſhe may not ſue her Husband, nor her Husband ſue her, *Sympſons* caſe, *Tothill* 94, 97.

Secondly, ſhe hath been allowed to ſue without her Husband, and without his privity, eſpecially he being beyond the Sea, *Tothill* 95.

The Woman and her Husband agreeing to part upon difference, and he giving her a ſum of Money for her livelihood, which was put into a friends hands for her, ſhe was allowed to ſue alone for this without her Husband. *Caries* Reports 87.

Thirdly, ſhe was admitted to ſue here for a duty releaſed by her Husband, gone beyond Sea, as in *Fareweli*

Farewells caſe, 32. *Eliz.* and *Barkers caſe*, 5. *Caroli Tothill* 95. as for her Jewells, the Earle of *Darbies caſe*, *Tothill* 96. And yet ſhee having Goods, ſhe pretended to be her *Paraphernalia*, the Husband deviſed them, and it was here allowed to be good, and ſhe remedileſſe, as in *Davenports caſe* 5. *Caroli*.

Fourthly, if a woman had goods at the Marriage, and the Husband doth uſe and diſpoſe them al his life time, and then giveth them away, or maketh an Executor; this Court it ſeems will give her no releife, albeit the Husband leave never ſo great an Eſtate beſides, unleſſe they be goods ſet apart and preſerved for her lively-hood, by ſome agreement or the like, *Tothill* 55.

5. A woman divorced from her Husband *Cauſa frigiditatis*, ſued in this court for her portion, her Father being alive, and recovered it, *Burrows caſe*. *Tothill* 81.

6 The Wife being parted from her Husband, and having an Eſtate to her ſelfe, was allowed by the court to deviſe it by her will, *Mich.* 15. *Caroli Tothill* 97. *Georges caſe*.

7 If a feme ſole being poſſeſſed of a Tearme, granteth it over, or a Tearm be granted by another to her own uſe, and then ſhe taketh a Husband and dyeth, in this caſe the court ruled it to go to the Executor or Adminiſtrator of the wife, and not to the ſurviving Husband.

A. Being poſſeſſed of a Tearm, granted it upon a Marriage to be had between him and *R. S.* to *I. S.* her Brother to her uſe, and after marriage A. dyeth, and ſhe marrieth again, and then she dyed. I. S. the Brother took out Adminiſtration of her Goods, and got the leaſe, and the ſecond Husband ſued him in this court for the Leaſe, but the court would not releive him *Paſch* 32. *Eliz. Withernams caſe* in chancery,

8. A. being poſſeſſed of a Leaſe for years, granted it to *B.* and *C.* to the uſe of *A.* and his Wife, and afterwards A. granted away all his Intereſt to a ſtranger, and the Court would not order it againſt the Wife, *Dyer*, 369. *Crompons Jurisdictions* 65.

A. conveyed her Leaſe for yeares to Leſſees in truſt, to the uſe of her Daughters and Children: lyneally A. had a Daughter by one Husband, who had Iſſue, and it dyed, and the Husband alſo, then ſhee marries again, then the Leſſees in truſt convey the Leaſe to the Mother and her ſecond Husband, and diſcharges the truſt, ſhe gives it to her Husband, and the Heir ſued for it.

It was ordered that the Husband and not the Heir ſhould have it: *Baskervils caſe*, *Tothill* 95.

A Widow being about to marry, to prevent her Husbands diſpoſall of the Land, conveys it to friends in truſt, who with the Husband do ſell it for valuable conſideration, and ſhee ſued in Chancery, and the Court decreed that the Purchaſor ſhould reconvey it to her, but ſhould firſt deduct all his diſburſements: *Fitziames his caſe*, *Tothill* 43.

A ſingle woman Widow or Maid, may ſue and be ſued here as another Body, of which take ſome few caſes.

1. A Widow of a Tenant in *Capite* ſued here for her Dower, and had a commiſſion to ſet it out; as in *Wilds caſe* 25. *Eliz.*

No woman ſhall recover Dower of a truſt by this Court. *Mich*, 2. *Caroli. Kemps caſe.*

When the woman cannot tell who is Tenant to the Land, ſhee may ſue, (albeit her writ of Dower here at Law) to diſcover the Tenant, to know againſt whom to bring her action, *Tothill*: 99.

A. conveys Land to B. and his Heirs, to the uſe of him and his Heirs, in truſt for C. and his Heirs

(B having

(*B.* having then a Wife) B. dies, and his Wife ſued for Dower of the Land, C. ſued againſt her for releif here, and it was denyed; yet the Wife of C. ſhould not have had Dower in this caſe, for a woman ſhall have no Dower of a Truſt, *Hernes caſe Tothil.* 9.

So *A.* delivers *B.* 500 l. to put to uſe for him, and B. doth buy Land with it, and makes A. beleive it is for him and in his name, but it was in his own name: A. it ſeems ſatisfied herewith, B. dyeth, and his wife ſued to be indowed of the Land, and the Court would give A. no releife againſt this Suit: *Trinity 6. Caroli.*

(A Copy-holder may not be ſued for Land without the Lord, *Caries Reports* 57.)

An Heir alſo here in ſome caſes ſhall ſue and be ſued, further then the Law bindeth him, as in the caſes enſuing.

An Heir of an Eſtate in taile, having Lands in fee, diſcended from the Anceſtor, in lieu thereof is bound by decree to repay the purchaſe money, or let the Purchaſer have the free Land, *Peacees caſe* 8. *Jacobi Tothill* 184.

The Mother and Son bought tailed Land of her Anceſtor, to the Plaintiff ſome of the money due on a Bond which is loſt, the Court thought fit to charge the Mother and the Son, becauſe of the Land in their poſſeſſion.

The Father ſold his intailed Lands, but had little for them; it ſeems the Heir may compell the purchaſer to give the worth, *Tothill* 182.

The Father articled for Land, the Son no party, but conſented to it, and it was decreed againſt him, *Pauls caſe Trin.* 4. *Jacobi. Tothill* 69.

A Deed not inrolled was decreed againſt the Heir of the Land, *Tothill* 55.

The Father conceiving his Land to be Free-hold

gave part of it to a younger Son, and it fell out that there was an old sleeping Deed of intaile, and yet it was ordered the younger Son should have it: *Pountneys case, Tothil* 54.

Executors may charge or be charged in Equity, further then the Law doth charge, wherein as to suits or Acts by them, take these insuing.

1. Here they may sue one the other, *Tothill* 8.

2. One of them may sue an Executor of an Executor, if he have gotten the Estate into his hands; *Briertons case 6. Iacobi, Tothill* 87.

3. Two Executors be, the one doth disagree, the Act of the other shall bind in Equity as it doth in Law.

As to suits against Executors, take these things.

First, one Executor alone without the rest may be sued here, but he shall be charged for no more then he hath, *Harbages case* 35. *Eliz. Tothill* 86.

Secondly, an Executor shall be bound by decree against the Testator, *Hil.* 5. *Caroli.*

Thirdly, He must pay costs adjudged here against the Testator, if he have assets.

Fourthly, he shall not be charged here for a Trespasse done by the Testator, *Hollands case Tothill* 84.

Fifthly, nor may he be compelled here to give Bond to performe the will, without speciall cause be shewed, as that he is decayed in Estate, or hath broken the trust already in some particulars, or the like, *Browns case* 32 *Eliz. Tothill.* 36.

Sixthly, He may here be ordered to pay a debt by word, before a debt due by specialty, *Tothill* 53.

One Ioynt-Tenant, or Tenant in common may here have releif against another.

The Father may have releif against his own Son in case of breaches of trust for a Lease. *Pasch.* 1597. *Dormers case.*

Of

Of Trusts.

A Use of trust was, and still is either of Land or of Goods, and both these are either expressed or implied.

A use of trust of Land was a trust reposed in another, that he should suffer him that did trust, to take the profits of it, and he that was trusted, was to dispose the Land according to the direction of him that trusted him; as when a Feoffment was made to *J. S.* and his heirs, to the use of *W. S.* and his Heirs: here *J. S.* had the Estate and property of the Land, but *W. S.* had or was to have the profits in honesty and equity. So if one had agreed with *W. S.* for a price of Land for 20 l. paid, and had no assurance, yet the equity of the Land was in the contractor.

The use of Goods is when one man hath them in trust for another.

The use of Goods or Land expressed, is when the use or trust is expressed between the parties upon the making of the Estate, implied, when it is not declared upon the agreement, but left to the construction of Law, as if I bargain and sell my Land, levy a Fine, make a Feoffment, or suffer a Recovery of my Land without money, and no use expressed, this in Law is to my own use.

But if it be for money, it shall be to the use of the bargainee, conusee, Recoverer, or Feoffee.

If it be without consideration that I conveyed my Land by Feoffment to *J. S.* to have and to hold to him and his Heirs to the use of his Heirs, in this case *J. S.* and his Heirs have the use in Law.

To every of these uses, there are two inseperable incidents, confidence in the person, and privity in

the ſtate expreſſed by the parties, or implied by the Law; And when either of thoſe failed, the Uſe was either gone for ever, or ſuſpended for a time at the leaſt; and therefore if the Feoffee to Uſe upon good conſideration, had infeoffed another of the land, that had notice of the Uſe, the Uſe had been gone for ever; becauſe howſoever there was a privity of Eſtate yet there was no Confidence in the perſon; but if the feoffment had been without conſideration, to ſuch a one, in this caſe the uſe had remained ſtill, becauſe the Law did imply a notice: So alſo it ſeems the Law was, when it was made in conſideration of Marriage only.

And if a Diſſeiſor, Abator, or Intrudor, had come to the poſſeſſion of the Land, whereof the uſe was, albeit he had notice of the uſe, yet the uſe was ſuſpended during their poſſeſſion, and they ſhould not have been ſeiſed to the uſe as the Feoffee was, for they come not to the Land in the *Per*, but in the *poſt*.

If a Lord by Eſcheat, Lord of a Villaine, or one that had entered for *Mortmaine*, or that had recovered in a *Cuſtodivit*, *&c.* had come to ſuch Land, and had notice of the uſe, the uſe had been gone for ever, for thoſe come to the Land in the *Poſt*, and above the uſe.

And the Tenant in Dower, and by Curteſie, ſhould not be ſeiſed to uſes in being, for all theſe wanted privity of Eſtate.

And if there had been tenant for life, the Remainder in fee in the uſe of another, and the Tenant for life had made feoſment in fee to one that had notice of the uſes, this ſecond feoffee ſhould not have ſtood ſeiſed to the firſt uſes.

So if the Husband had made a Feoffment in Fee of the Land of his wife, upon conſideration, and without any uſe expreſſed, the wife ſhould not have had a *Subpœnâ*, becauſe the Feoffee was not in privity of the Eſtate of the wife.

And

And if *Ceſtui que uſe* for life, or in taile, the Remainder in taile with divers Remainders over in uſe, had made a Feoffment to one that had notice, hee ſhould not have been ſeiſed to the firſt uſes.

But now at this day, by the Statute 27 *Henry the eighth*, *Chapter the tenth*, the uſe of truſt and the poſſeſſion of Lands are for the moſt part united, and in all ſuch caſes where they are united, and the uſe executed by the Statute, the Chancery doth not intermedle, but leave them to the Law. And ſuch is this, where one ſeiſed of Land in fee, doth convey it to the uſe of one and his Heirs, or Heirs of his Body, or for life, or to the uſe of one of his Executors or Adminiſtrators for years.

But there are ſome uſes and truſts ſtill that are not Executed by the Statute, and thoſe remaine as they were before, and are in the Conuſance and order of the Chancery, as where Lands are conveyed without conſideration in fee-ſimple after this manner, that the Feoffee and his Heirs ſhall take the profits, and deliver them to the Feoffor and his Heirs, or that the Feoffee ſhall account and give the profits to the Feoffor, or that the Feoffee ſhall convey the Land to the Feoffor, or to his Heirs, at his age of one and twenty years, or where it is conveyed to *J. S.* and his Heirs, in confidence that *J. S.* ſhall alien it to whom the Feoffor, or to whom *W. S.* ſhall appoint, or the like: Or where the Lands be conveyed to certaine uſes expreſſed, and there no other ſecret uſes be agreed upon between the parties.

So where Land is conveyed to one without conſideration to one and his heirs, without expreſſing any uſe or intent, this is to the uſe of the Feoffor, who may diſpoſe of it as he pleaſeth; But if it be to any intent certaine, as to take back an Eſtate with remainders to others, *&c.* Here hee cannot change it.

Theſe and ſuch like uſes and truſts are not within, nor executed by the Statute, but they remaine as they were before the Statute, for all the ſtate is in the party truſted, and the Grantor, or he to whoſe uſe the Grant is, hath nothing but a uſe, for which he hath his remedy only in Chancery, where matters of this nature are determinable, for it is a rule, that as the queſtions of uſes and truſts that are within the Statute, are to be decided and ruled by the Judges of the Common-Law, ſo all other queſtions of uſes and truſts that are out of the Statute are to be ruled and decided by the Iudges of the Chancery, *Cook* 1. 138. *Dyer* 369. 356. *Cromptons Juriſdiction* 65. 58. 59. And the Iudges in Chancery in ruling thoſe caſes, do proceed much after the rules they went by in the regulating of uſes at the Common-Law, before the Statute.

Before the making of the Statute, theſe amongſt other were the Lawes of the uſes.

1. The Feoffor was to take the profits of the Land, and he might have diſpoſed of it in his life time, or at his death to whomſoever he pleaſed, & his friends in truſt were to ſettle it accordingly, or be inforced to it by *Subpæna* in this Court; and if hee did not diſpoſe it, the uſe was to go to his Heirs, and if he had dyed without Heirs or diſpoſition, it ſeems the Feoffees ſhould have had the Land.

Secondly, If the firſt Feoffee had conveyed it to a ſecond Feoffee to the ſame uſe, or to a ſecond Feoffee that had notice of the uſes, in theſe caſes the ſecond Feoffee had it to the ſame uſes; but if the Feoffee had ſold it *Bona fide*, or conveyed the Land to one that had no notice of the uſes, in theſe caſes the uſe had been gone, and hee, to whoſe uſe it was, remedileſſe for the Land.

3. A bruit of a truſt, or ones ſaying there was a truſt

trust to another, I being about to buy the Land; because he would not have me to buy it, it seemes is not sufficient, but a Suit about it, and proofe of it in Chancery, is sufficient notice to him that shall buy it.

4. If the *Cestuy que use* had appointed the Land to be sold by his Feoffees to pay his Debts, the Creditors might have compelled the Feoffee to sell it, if he in his life time, or by Will at his death had appointed them to convey it to *J. S. J. S.* might have compelled them to it, and so their Heirs.

5. The Feoffees (if any occasion had been) were to bring or defend any Action for the Land, and to plead such Pleas as the Feoffors should appoint, or be inforced in Chancery to it.

6. If the Feoffor dye, and the Land descend to his Heire, the party to whole use, *&c.* as it seems had no remedy against him.

7. If the Feoffee or Donee to use, sell to one that knows of the use, the *Subpœna* shall go against them both, or otherwise against the party trusted only, who must make a recompence for the breach of trust, if the Land be gone.

These amongst other, were the rules by which uses at common-Law were guided, and much accordingly are uses now executed by the Statute, and trusts of Lands and Goods ordered and guided at this day, as in the cases following, of Inheritance and Freeholds, of chattells, of Goods.

Of Inheritance and Freeholds.

IF I without any consideration Enfeoff one and his Heire, of Land, to the intent he shall take the profits thereof, and deliver to me and my heires: Or

to

to the intent he ſhall account to me and my Heirs for the profits thereof; or to the intent he ſhall reconvey it to me and my Heirs, or to my Heire at one and twenty years old, or to the intent that he ſhall alienate it to *L. M.* and his Heirs, or to whom I ſhall appoint; or I convey it to certaine uſes expreſſed, but there are other ſecret uſes agreed upon between us, in all ſuch like caſes which are out of the Statute of uſes, this Court of Chancery, if any complaint be, will order the parties truſted to performe the truſt.

If I without any conſideration bargain and ſell my Land by Indenture, to one and his Heirs, to the uſe of another and his Heirs (which is a uſe upon a uſe) it ſeems the Court will order this: But if it were in conſideration of Money by him paid, here it ſeems the expreſſe uſe is void both in Law and Equity.

And if a woman in conſideration of four hundred pounds paid her by her Son, bargaine and ſell her Land by Indenture to him and his heirs, to the uſe of her ſelfe for life, and after of the heirs of her Son, in which caſe by Law the Fee-wmple is to the Son preſently, and the uſe for life to the Mother void; nor is there as it ſeems any relief for her in this Court in a way of Equity, becauſe of the conſideration paid, but if there were no conſideration, on the contrary, *Tothil.* 188.

A voluntary conveyance was made to friends in truſt, to the uſe of the mans owne Children, with a remainder over; the Feoffor being indebted much Money, the Court inabled him to ſell part of it to pay his debts, *Grants caſe, Tothill* 42.

If one that hath Land in truſt, convey it to one that hath notice of it, and he convey it to one that had no notice of it; in this caſe he that had no notice

Cur. Canc.

tice is seised to the first uses, *Pills Case*, *Tothill* 186.

If one convey his Land to friends in trust, and after sell the Inheritance, the trust in Equity goes to the Purchaser, *Decrees Tothill* 44.

Copy-hold was surrendred to the use of *J. S.* to the intent that he should pay an Annuity to a third person, the which he refused, the Court ordered him to pay it with all the Arrears, *Tothill* 107.

Of Chattells real, and terme of years.

IF I be seised of Land in Fee, and convey it to D. L. and his Heirs, to the use of W. S. his Executors and Administrators for twenty years, or for any other number of years, in this case the use will be executed within the Statute: But in case where I be possessed of a tearm of years in being, and grant it to Friends to any uses and purposes in trust, this is out of the Statute of uses, and orderable in Chancery onely, where if the trust be broken, I must have remedy.

One possessed of a tearm in years, conveys it to Friends in trust, to the use of D. for life, and after of the Heirs Males of his body, in this case the Court resolved and ordered that D. so long as he hath an Heire may dispose it; and that an intail of, or out of a Chattell, is not good: but a Remainder in taile of a trust may be ordered in Equity, the Judges agreeing to it, *Tattons Case*, 2. *Jacobi*. *Tothill* 83.

The generall trust of an Executor is to pay debts and legacies, and for the surplusage to account to the Ordinary, *Ad pios usus*.

Henry, *Earle* of *Darby*, conveyed certain leased lands in trust to *Doughty* his servant for payment of his

his Debts, and upon a mediation of an end of controversies between the Daughter of *Ferdinand*, Eldest Son of *Henry Earle*, and *William* his younger Son now Earle: It was ordered and agreed, that *William* the now Earle should pay all his Fathers Debts; whereupon *Doughty* conveyed all those Leases to *William*, and after the creditors sued him in Chancery, but had no relief, and were ordered to pursue their remedy against *Earle William*, *Hil*, 1 *Jacobi*, *Caries Reports* 25.

The Plaintiffs Wife conveyed away her Estate to the Defendant her Son before marriage, and after the Defendant conveyed it to his children: In this case the court conceiving it to be done without any consideration, did decree it for the Plaintiff against the Defendant and his children, *Poveys case*, *Tothil* 98.

Of Chattells personall, or Goods.

IF I deliver Money or Goods, or cause a Statute, bond or other Especialty to be made to another to my use, or to any purposes or intents in trust, and he perform not the trust, I may compell him to it, or to give me recompence for the breach of the trust here, and therefore if he dispose the money or goods to his own or any other use, then I appointed it, or will not dispose it according to my mind, or release or discharge the duty, my remedy is by *Subpœna* in this court, and if in these cases the Goods or money be taken from him, or he have any injury in them, he must sue for remedy, and I may compell him to it here, 7. *Ed* 4. 14. 29. *Cromptons Jurisdiction*, 43. 62. 65. *Brook Feoffment* 60.

If a Statute be made to *A.* and *B.* to the use of *A.* alone

alone; and the Conuſor get a releaſe of it from B. alone, in this caſe A. ſhall have remedy here againſt them both, (as ſome ſay againſt B. only; and not againſt the Conuſor.) See *Caries Reports* 14. *and* 15.

Of Bargaines, Agreements, or Promiſes.

ARticles of Agreement were breifly drawne between two, and their hands to it, for the Sale and aſſurance of lands for money; the Seller refuſed, and upon complaint here, was ordered to make the aſſurance according to the agreement, the Manner of the aſſurance referred to a Maſter of the Chancery, *Chivers caſe, Hil.* 4. *Caroli.*

A Suit was brought here upon a paroll agreement to execute an aſſurance of Land upon a Marriage agreement (the caſe thus.)

A. Suitor to B. the Brother of A. comes to B. and tells her that if ſhee will marry his Brother, he will aſſure her of twenty pounds a year land for her loynture, and ſhee did marry him, and after he refuſed: It was decreed in this Court, and the Court of Requeſts both, that he ſhall be compelled to it; and where it is ſaid, that heretofore the Chancery did not uſe to decree paroll agreements for aſſurance of Land, it is now otherwiſe; for where there is any Execution of it by payment of all or any conſiderable part of the mony for the Land, there the Court doth decree it.

In the Exchequer one ſued by Engliſh bill upon a paroll agreement to have Land aſſured, and ſhewed that he had provided two thouſand pounds the purchaſe

chaſe money to his great loſſe, *&c.* And the other refuſed to aſſure the Land: in this caſe the Court would not decree the aſſurance of the Land, but decreed he ſhould pay the Plaintiff damages for his loſſe. So in the 13 *Caroli, Olivers caſe.*

The agreement was to convey the Land, as Counſell ſhould adviſe, the Paper Book drawn, and agreed on to be ingroſſed, and then the ſeller refuſed to proceed, in this caſe the Court would not decree it to be done, becauſe no articles nor money paid, but a bare paroll agreement, and yet ſome ſpecial circumſtance may make this binding, and therefore a verball agreement between Lord and Tenant, becauſe the Tenant was an ancient Tenant, and hath been at charge at building, was decreed, *Kings caſe, and Hunts caſe, Totbill* 65. 66.

A. covenants with *B.* upon the marriage of his Daughter, to levy a Fine of the Land to *D.* And the Daughter being dead, and ſome money unpaid, *A.* ſold away the Land to others. In this caſe he was ordered for a hundred marks to make the Eſtate good; *Mich.* 8. *Caroli, Pages caſe, Totbill* 47. and 48.

A Bill was preferred here, ſuppoſing ten ſhillings paid; and two thouſand pounds to be paid for Land, to have the Land aſſured, and upon Demurrer it was over-ruled becauſe it may be to prepare for an Action of the caſe; but it ſeems in this caſe the Court would not decree the Aſſurance, *Trin.* 38. *Eliz, Williams Caſe, Totbill* 72.

The cuſtomes of a Mannor were in queſtion between Lord and Tenants, and Tenant and Tenant: And a generall agreement made by deed indented and inrolled here, and a Bill to eſtabliſh it, and nothing could be found but the Deed, and yet the court would not alter it, albeit it was objected that the Lord was at the time of the agreement Tenant in

Taill

Tail, and ſome of the Tenants infants and feme Coverts; *Caries Reports* 22.

If one enter into a Statute to *J. S.* who doth afterwards by Indenture of agreement promiſe and agree with the Conuſee, that in caſe the Conuſor did faile of payment, Execution ſhould be done upon ſome certaine Land only: In this caſe, if after it he ſhall ſue Execution upon any other Lands, the party grieved may have relief here, and compell him to perform his agreement, and have an injunction alſo if he deſire it; *Pulvertoſts caſe, Caries Reports* 37.

The Plaintiffs Bill was that he leaſed a houſe to the Defendant, and did covenant to repaire it, and then the Defendant did covenant to keep it ſo, and that the Defendant as well to make the Plaintiff break his covenant, as to free himſelfe from his covenant, did interrupt and threaten the workmen, ſo that they durſt not go on, and ſo the Houſes are decayed, and the Plaintiff without remedy. The Defendant demurred, pretending the Plaintiff had remedy by Law, but it was over-ruled and put to anſwer; *Caries Reports* 59.

A Bill was brought to be relieved againſt the Defendant as Brother and Heir, for that the Plaintiff had paid to his deceaſed Brother, 34 l. for a Leaſe, and he died before it was made, and therefore deſired his Leaſe or the money, and was relieved, *Caries Reports* 77.

One Joyn-Tenant promiſed the other, lying on his death bed, he would not take advantage of the ſurvivorſhip, but ſuffer him to diſpoſe of it by his will, by which he deviſed part of the payment of his debts, and the Survivor was ordered to make the Eſtate accordingly: *Caries Reports*, 81.

The Plaintiff bought of the Defendant the reverſion of a copy-hold which he could not enjoy, as was confeſſed

feſſed by the Defendants anſwer, Ordered by the Court to ſhew cauſe why he ſhould not repay the money back againe, which he had received on the Bargain: *Caries Reports* 93.

One brought his Bill to be releived here upon a promiſe made to him by the Defendant to ſurrender a Leaſe upon the payment of a hundred Marks; and becauſe the matter was meet for the Common-Law: *Caries Reports* 95. 97.

The Bayliffs of a town promiſed a leaſe, the Court upon this would not give any releife againſt any of their Succeſſors, but againſt the ſame perſons, as common perſons upon the promiſe: *Caries Reports* 103.

What miſpriſions in conveyances, or other Deeds are releivable here.

WHere there is any miſtake in a Deed, ſo that it is not made in purſuance of the intent and Agreement of the party, this Court gives Releiſe.

If the word Heirs being in fee ſimple, or the like, be omitted; or that part of the land bought and ſold be left out of the Deed, and that it do appeare that the conveyance was made upon good conſideration, the Court in this caſe will rectifie it ſee to this purpoſe, *Caries Reports*, 16. and 17.

Dean and Chapter of *Briſtoll* made a leaſe, miſtaking the name of the corporation, and the court held, that for leaſes made for ſome time of continuance, and upon good conſideration, there ſhould be releiſe given here, *Caries Reports* 32.

The leſſee in the leaſe was not named in the premiſes of the leaſe, but in the *Habendum* only, decreed

to

be good, and being referred to the two chief Justices and the chief Baron, was by them certified to be good in Law, *Butlers* case, 22 *Eliz.* *Caries* Rep. 88. One brought his Bill here, to be relieved, for that he had conveyed by the Deed more Land than was intended and agreed; in this case because it appeared that the Defendant was a Purchaser, upon a valuable consideration, the Court would not relieve the Plaintiff, *Cliffords* case, 4 *Jac.* in Chancery: and yet where more Lands passed by a Fine than was intended, and the party relieved here by the Judges consent, *Caries* Reports 20.

Mistakes in making of a Bond in either of the parties names may be holpen here, *Colstons* case, *Tothill* 7.

If a power be reserved to make Leases by a Covenant without a transmutation of the Possession, no help can be here, because it is void in Law: and if it be upon a change of Possession, and the power be not precisely followed, that is, doubtfull, and rather more strong against help, for then the Estate works and the power gone, and upon Wills no help. See *Caries* Reports.

If one be bound to me for money, and the same day after the sealing of the Bond I give him a Release for other things, which by mistake is made too general, whereby this Bond is also released, in this case I may be relieved here, and shall receive the Money notwithstanding, *Tops* case, *Tothill* 27.

Haddam the Husband was ordered to procure his Wife to levy a Fine, and to enter into a new Bond of five hundred pounds, because the old Bond was worth nothing, by the mistake of the Writer, 10 *Jac.* *Tothill* 140.

Where an Assurance of Land is made defective, this Court will inforce the perfecting of it.

WHere a Conveyance is made for Lands or Tenements, and it is found defective, and the Estate not well executed to the Purchasor, according to the intent of the parties, for lack of words sufficient in the Deed, or for lack of Livery of Seisin, Attornment, Inrolment, or the like: and there was a good consideration given for the Land; in such like cases the Court in behalf of the Purchasor will compell the party, in whose power it is, to perfect the Estate, *Toth ill* 44.48,182,183,138.

Where a man for money, or other valuable consideration sells Land to one, and the word Heirs is left out in the *Habendum*, in this case the party who sells shall be compelled to amend it: And so when less is granted than was intended, and so for any other mistakes, *Caries* Reports 16,17.

A Messuage was demised (*cum pertinentiis* onely) and becaus sundry Lands had been occupied formerly therewith for the same Rent, and by Lease of the same words, the Lord Chancellour *Bromley*, and the Judges ordered it shall all pass, though perhaps in Law they will not pass by those words, but it seems in such like cases it is very considerable in equity, what the value of the Land is, and what money is given; for if the House with the appurtenances be sufficient for the money, unless the intent of the parties were to grant the whole, it seems agreeable to equity that there should be no further extent made of the words than what the Law makes.

The

The Anceſtour takes money for a Leaſe, and dies before it is made, the Heir muſt make it good, or repay the money, *Caries* Report 7.

Where a man for money, or other valuable conſideration, ſells Land by Deed, but Livery of Seiſin is omitted, I may compell him afterwards to do it, by this Court: So likewiſe, if upon the ſame conſideration he ſell me Land in two Counties, and have given me Livery of Seiſin of the Land onely in one County, this Court will order him to make Livery in the Land in the other County, or pay back part of the money, *Caries* Reports 17.

Where a Conveyance is imperfect through the want of the Tenants Attornment; the Tenant in this caſe ſhall be compelled by this Court to attorn, and ſo it was decreed in *Hillary* Term, 3 *Car.*

A. was Leſſee for one and twenty years, and leaſed to *B.* for ten years, rendring Rent; *A.* without the privity of *B.* did grant the Reverſion to *C.* and *B.* refuſed to attorn, and *C.* thereupon ſued *B.* in Chancery, to compell him to attorn; And in this caſe it was decreed by the Maſter of the Rolls with the aſſent of the Maſters of the Chancery, that he ſhould attorn and pay the Arrearages; But Juſtice *Whitlock* then Aſſiſtant was utterly againſt it, and of his opinion were the two chief Juſtices, chief Baron, and Juſtice *Dodridge*; but they all agreed the parties themſelves to the Aſſurance may be compelled to make Livery; and it hath been often denied here to compell him to attorn who is at liberty by Law, eſpecially where the party quarrelleth at the Tenants eſtate, or entreth into part of the Land, or hath covenanted for recompence in caſe of not Attornment, *Caries* Reports 4.

Where the Conveyance is made without good consideration, this Court of Chancery will give no Relief.

FOr instance, where there is a Rent granted, and no Deed to warrant it, and nothing given for it, or a Reversion is granted, and nothing is given for it, this Court will not inforce the Grantor to perfect it.

Where Estate was made by Covenant, and not good by Law, it was ordered by this Court to be made good, *Princes* case, 40 *Eliz. Tothill* 85.

A Deed which was not inrolled was by this Court decreed against the Heir of the Land, but agreed it should not binde any other Estate challenged by Survivourship, or otherwise, *Pauls* case, 14 *Car. Tothill* 54.

A Bill was here exhibited, to be relieved against the Defendant, who would have avoyded an Estate for lack of Livery of Seisin, and it appeared that the Plaintiff had enjoyed it quietly five and twenty years, in this case it was decreed he should continue the quiet possession without Livery and Seisin, *Rideus* case, 17 *Jac. Tothill* 54.

Upon Promises concerning Goods or Debts.

WHere there is a Contract made for Goods or Chattels wherein the Contractor hath any wrong

wrong done him, if he gives (*Quid pro quo*) that ſo it appears there is a good conſideration in it: in this caſe the Contractor may be here relieved, but on the contrary, where there is no conſideration, for there is *Nudum pactum*.

Where a man makes a promiſe without conſideration, to build a man a houſe, make him ſuch or ſuch Goods, he ſhall not be here compelled to it, *Cromptons Juriſdiction* 49.

A ſpontaneous and general promiſe without any conſideration was made by the Son to pay his Fathers Debts (no advancement coming to him by his Father) he being ſued here, the cauſe was diſmiſt, *Alexanders* caſe, 7 *Car.*

Where the Obligee agrees with the Obligor, to give him day for payment of the Debt, and he ſueth him or his Surety before the day given, here this Court will relieve him.

What Relief ſhall be had where there is extremity uſed, upon a Statute Morgage, Bond, or other Ingagement.

WHere a man by way of Morgage conveys Land to another for ſecurity for money lent, in this caſe albeit the time of Redemption be paſt, yet upon the paying of the principal money, Intereſt and Damages, he may have the Land again by Decree of this Court; yet where the Morgage hath been of long continuance, as of twenty years or upwards, this Court will hardly give back the Land, unleſs in ſome caſes extraordinary: and if the Morgager make a Feofment of it to a ſtranger, and ſo

extinguish the Condition, unless it appear to be to the end to pay the Debt, the Feoffee perhaps may not have this advantage, *Caries* Reports 53. *Crowthers* case, 39 *Eliz. Tothill* 79.

A Copiholder in Fee surrendred to the use of one and his Heirs, upon condition of Redemption; after this computing his Debts, and writing them down, he doth will part of his Land shall be sold to pay his Debts; after his death one of the Creditors doth pay the money at the day of the Mortgage, yet the Surrender was inrolled, and another Creditor sued him and the Heir here, and had a Decree that the Land should be sold to pay the Debts, and if any remained it should go to the Heir, *Caries* Reports 7.

Where there was Lessee for years rendring Rent, and two men striving for the Reversion, he exhibiting his Bill against him, upon payment of his money into Court, according to his Lease, he had an Injunction to forbid them both any further to trouble him, *Caries* Reports 46, & 47.

Where the Conusee of a Statute extend the Lands in the hands of one of the Purchasers, and spare other Purchasers: In this case he may be compelled to extend upon the whole in all their hands, *Caries* Reports 111, 112.

Where a man grants a Rent charge out of all his Lands, and after sells it by parcels to divers persons, and the Grantee force one onely to pay it, the party so paying it may here be relieved, and force the rest to contribute, and the Grantee to take no more of him than what is answerable to his proportion of Land; but in such case he must be sure he make all that have bought any of the Land, Defendants; that so he may make them chargeable with the Rent, and then they must shew cause why they should not contribute, *Caries* Reports 2, 23, 92.

When

When the Conuſee in a Statute, or Plaintiff in a Judgment hath received ſatisfaction, the Plaintiff in Chancery, or Conuſor, his Heirs, Executors or Adminiſtrators; or a Purchaſer charged or chargeable by it, may force him, if he be living, or his Executors, or his Adminiſtrators, if he be dead, to acknowledg ſatisfaction upon the Judgment, or to deliver up the Statute: and if Statutes be very ancient, and nothing done upon them, this Court will inforce the Owners of them to deliver them up without ſatisfaction. In like caſe this Court will force the delivery up of old Bonds, *Tothill* 178,179. *Caries* Reports 145,146.

Where the Plaintiff had Judgment and Execution againſt the Defendant for three hundred pounds, he was by this Court here ordered to take it out for 100 l. onely, *Caries* Reports 51.

Where a man upon an Obligation, *&c.* either at, or after the day according to Law, hath paid any money, and hath no Acquittance for it, or have otherwiſe at, or after the day ſatisfied it, and hath no Acquittance for it, and it appears the Obligee hath accepted it, and is ſatisfied, and yet keeps the Bond, and refuſeth to give the Party a Diſcharge; in theſe caſes he or his Executors, *&c.* after his death may inforce him, his Executors, *&c.* after his death in this Court to diſcharge it, and to deliver up the Ingagement, *Caries* Reports 74. *Tothill* 26,27.

Where a man doth his utmoſt endeavour to pay money at the day, and to that purpoſe after he hath provided it, he is robbed, or let by ſome other chance, & afterwards makes tender of it in ſome ſhort time. So where part of the money is paid, & yet the whole Ingagement lies, and the party that hath it doth refuſe to deliver it up, or to receive the reſt of his money, it being tendred ſhortly after the day, or acknow-

ledg what is paid, *&c. Caries* Reports 1.

So where the Bond is to do any thing other than the payment of money, and the thing is done, and the condition performed, *Caries* Reports 45,46.

Where a man takes a double security for one and the same Debt, as where he takes a Bond or a Bill and Goods in pawn, or any thing of the same nature, this Court will inforce him that hath taken this double security, to deliver up one of them, *Tothill 26, & 27.*

Where I appoint a Scrivener to put out and receive my money, and by my direction he doth receive the money due upon a Bond at the day, and the Bond remain in my hands, and I refuse to deliver it up, this Court will inforce the delivery of it up, *Hunts* case, 22 *Jac. Tothill* 175.

Where a man enters into a Bond or any other Ingagement, for money unlawfully gotten, as at Dice or Cards, or upon a cheating Contract, or the like, this Court will see him relieved against it, and have it took up or cancelled, *Tothill* 23,24.

Where a man gives an Ingagement for that that is nothing worth, and which is neither gain to the Obligor nor loss to the Obligee, as for Debts, things in Action not recoverable, here this Court will give relief.

A. had a Son he intended to present to the Church of *Dale*, and he being sickly presented *C.* for the present, taking Bond of him of 600 l. to resign upon request, *C.* is instituted and inducted. After the Son of *A.* becomes healthy, and *C.* is required to resign, he refused, his Bond is sued, and he comes into this Court for relief, it was denied to him, and the Bond agreed to be good in Law and equity. *Trin. 6 Car. Wood* and *Berries* case in Chancery, *Tothill* 26,27.

Where

Where a man makes a Bond not to marry without the consent of Friends, and the Bond becoming forfeit, is sued; it seems this Bond is not good, and this Court will give the Obligor relief, *Tothill* 26,27.

Where money is paid upon the Redemption of a Morgage by Indenture, without taking any Acquittance, this Court will inforce the Morgagee to bring in the Indenture to be cancelled here, *Caries* Reports 17.

The Son and the Father were bound to the Defendant in 500 l. to stand to the Award of the Lord chief Justice, who ordered that the Son who was Plaintiff, and had the Reversion in Fee, and the Father who had the Estate for Life, should make such Assurance as the Defendant should reasonably devise. The Defendant in pursuance thereof tendred an Assurance to the Father to be sealed, who being old and blinde, desired time to advise with his Friends, the Plaintiff the Son sealed, and the Father did afterwards offer to seal, and then the Defendant said, he did not care for his Seal, but he put the Bond in suit upon the Fathers refusal formerly, and it was staid by Order of this Court, *Caries* Reports 105

In any of the afore recited cases, if the party to whom such Ingagement is made, make use of it in any other Court by way of suit against him that entred into it, he may in this Court by Injunction stay the Suit, and shall have the matter ordered here as in equity is fit to be done, *Tothill* 23,24. *Sucklins* case, 11 *Car.*

This Court gives relief against the injuries of other Courts of Justice by their over-nice and strict observation of the Rules of the Law.

Where there is an extremity used against a man upon a Judgment had against him in any Court at Law, for money or Land, this Court although it will

not

not make void the Judgment, yet will it order the perſons as it ſhall ſee cauſe in equity, and this was reſolved upon a ſpecial debate by the Kings command in 14 *Jac.*

In all caſes tending to overthrow of Judgments had in other Courts, this Court neither may nor will not examine or revoke them; for if ſo, it would render buſineſs endleſs. See *Caries* Reports 74,75.

The Heir coming into his Fathers Houſe, had of his Fathers Goods worth five ſhillings, and the Defendant ſued a Bond of five hundred pounds againſt the Heir as Executour of his own wrong, and proving he ſold or gave away the Goods, a Verdict paſſed for the whole five hundred pounds, which appearing by the Certificate of the Juſtices of Aſſize, an Injunction was granted to ſtay all Proceedings in this Action, and to forbid any new Action, till the Court have determined the matter, *Caries* Reports 49.

A Debt upon a ſingle Bill ſatisfied, and the Bill not delivered, was ſued, and Execution gotten, and the party was by this Court relieved, 22 *Eliz. Owens* caſe, *Caries* Reports 74.

If one man do unduly get a Judgment in any Court in the name of another, Relief may be had here, *Caries* Reports 76.

A drunken man being ſued by another for words ſpoken in his drink, tending to Defamation, ſought for Relief here, but could have none, *Qui peccat ebrius, luat ſobrius*, *Caries* Reports 93.

One exhibited his Bill for Relief upon an Obligation of three hundred pounds, which he entred into, conditioned for the making a Jointure to his wife upon conſideration of one hundred ſeventy four pounds promiſed to him by the Defendant in Marriage,

which

which was never paid to him; he ſued at common Law upon the Bond: In this caſe an Injunction was ordered to ſtay proceedings, *Caries* Reports 112.

In what caſes the Tenant Copiholder ſhall be relieved, againſt the hard dealing of the Lord of the Mannour.

FIrſt, if the Lord will out his Tenant that pays his Rent or does his Services, or if the Tenant ſurrender in Court to the uſe of another, and the Lord refuſe to admit him, to whoſe uſe the Surrender was made, or will not keep Court for the benefit of his Copiholder, or exact uncertain Fees, they being certain; this Court in theſe caſes will give relief.

Secondly, if he will not admit the Tenant copiholder upon a Deſcent.

Thirdly, if the Tenant copiholder be outed of his Copihold, and the Lord will not hold a Court whereat he may ſue for his Right.

Fourthly, if a falſe Judgment be had againſt a Tenant copiholder, and he petition to the Lord to redreſs it, and he refuſe.

Fifthly, if the Tenant copiholder petition the Lord to grant him a Licence to let, and he refuſe it.

Sixthly, a woman Copiholder for Life, the Reverſion is granted two for their Lifes, *cum poſt mortem, vel foris facturam* of a woman, it ſhall happen, and ſhe take a husband that doth ſurrender to the firſt in Reverſion, who is admitted and dieth, and after

after the next desireth admittance, and could not have it, but the Lord entreth as an Occupant, (as he might) and the Husband and Wife were willing to surrender to him in the Reversion for Life, and the Lord refusing to keep a Court, or leave the possession, was ordered to do both in this Court, *Tothill* 3, 44, 45. *Caries* Reports 3. *Kitchin* 82, 89.

A Copiholder granted by the Lord, at a Court held out of the Mannour, made good against the Lord by Decree of this Court, *Marks* case, *Tothill* 45.

Where the Lord imposes an unreasonable Fine upon his Tenant upon a Surrender, *&c.* The reasonableness of the Fine shall be here adjudged of, and this Court will give relief. A years value of the Land hath been here allowed good, *Caries* Reports 54

This Court gives relief to the Surety against the principal Debtor or Creditor.

Where there is a Debtor with a Surety, and Creditor, and the principal Debtor, and Creditor, by compact, and agreement without the privity of him who is Surety, continues the Debt after the first day of payment, when the Surety doth suppose it to be paid: in this case this Court will compell the Creditor to take his relief from the principal Debtor, and discharge the Surety, his heirs, executors, *&c.* *Miles* case, 5 *Car.* *Hares* case, 10 *Jac.* *Saunders* case, 10 *Jac.* *Tothill* 181.

Where there is a Detainer of any Lands, Deeds or Goods, this Court will give relief towards the Discovery and Recovery of them.

As where a man hath Title to Lands, and intends to bring his Action, but cannot discover who is Tenant to the Land: in this case he may sue the Occupier in this Court, and he will be inforced to shew what he, or any under whom he holds, claims to his knowledg, and then he may know whom to sue, and upon what grounds. Where

Where the Defendant held beyond his term, this Court inforced him to ſhew what term his Leaſe was for, *Mich. 6 Car. Tothill* 183.

The Conuſee of a Statute did by the power of this Court inforce a Leſſee for years to declare all the particulars of his Leaſe, that ſo he might diſcover whether it were extendable or not, 11 *Car. Toth.* 183. *Creſwells* caſe, *Tothill* 9. *Caries* Reports 16.

Where Writings are detained from a man, if the Court do ſee cauſe, it will inforce the Defendant to bring the Writings into Court by a *Duces tecum*, *Caries* Reports 43, 52, 53, 67.

This Court gives relief for the recovery of Land, Debt, or Duty, where the Law gives none.

Where a man hath a juſt Title to Land, but hath loſt his Conveyances, this Court will give relief for the recovery of his Land, *Caries* R. 24. *Goſſats* caſe.

Where a man hath a good Title to Rent, but no means to gain it, as if the Rent be ſeck, and he never had Seiſin of it, or any other Rent wherein he hath had no Attornment of the Tenant, or ſuppoſing the Rent is by ſome accident (without any recompence for it) diſcharged: ſo if it hath been uſually paid, but I can ſhew no Deed for it. In theſe and the like caſes this Court will give relief for the recovery of it, *Tothill* 72, 172, 173.

Where a man hath a Debt due to him upon eſpecialty, and hath loſt his Writing, or cannot come at it: in this caſe if he have witneſs to prove it, he may be relieved here for the Recovery of it, *Caries* Reports 25.

Where an *Elegit* was returned and filed, and the time thereof elapſed, and yet the Plaintiff unſatisfied of his Debt, this Court will give him relief by reviving the *Elegit*, *Tothill* 179.

Where a man makes a Will with ſeveral devi-

ſes

ſes, this Court will direct how they ſhall be taken and performed in equity.

The meaning of a Will is to be performed here, *Cobs* caſe, *Tothill* 141.

Where there was a Deviſe void in Law, by reaſon of a miſ-recital of a Grant, and lack of an Attornment, this Court did here decree it to be good, *Bacons* caſe, *Tothill* 79.

This Court doth give Relief againſt a fraudulent practice to avoid a Leaſe, *Caries Rep.* 18, & 22.

So likewiſe to avoid a Debt, *Caries Rep.* 18.

This Court will give relief in avoiding Conveyances fraudulently made, as where there is a Suit depending between two for Land, and the Defendant hanging the Suit, make ſecret Conveyances of the Land, this Court will order him to diſcharge the Land thereof, *Tothill* 108. *Harbynes* caſe, *Tothill* 9.

Thus much ſhall ſuffice to have ſpoken concerning the generality of the cauſes the Court of Chancery takes Conuſance of, in which for your further ſatisfaction, I refer to the Reports of Mr. Tothill *and Sir* George Carew.

It remains we ſhould now come to the partick part of it, which directeth for the moſt part, their whole manner of Proceedings, wherein for methods ſake we will begin with their firſt Proceſs, called a Sub pœna.

THis *Sub pœna* is the leading Proceſs of this Court, as to the procedure by Bill and Anſwer, and this doth require the Defendants appearance in this Court

Court by a certain Day under a certain pain, to make Anſwer to the Complaint of the Plaintiff, which is indeed the Bill, which formerly was wont to be put in before the *Sub pœna* was ſued forth, but now otherwiſe uſed; this is called a *Sub pœna* to anſwer, and diſtinguiſhed by that name, in reſpect there are ſeveral other *Sub pœnas*, in order to further proceedings, as a *Sub pœna* for coſts, a *Sub pœna* to make a better Anſwer, a *Sub pœna* to rejoin, a *Sub pœna* to hear Judgment, a *Sub pœna* for Witneſſes to teſtifie, *&c.* a *Sub pœna Duces tecum*, *&c.* for Writings, Evidences, *&c.*

Touching the *Sub pœna* to anſwer, you muſt be very carefull there be no miſtake in the body of the Writ, for that may prejudice the Plaintiff, and the Defendant may take advantage if he finde any; but if there be a miſtake in the Labell onely of the Writ, no advantage is to be taken by it.

This Writ may be made returnable two ways, either upon the common Days of Return, as from the Day of *Eaſter* in fifteen Days, *&c.* or upon a Day certain, after any of the uſual Returns, or after any the great Feaſts, from whence the Returns take their names.

This word [Next] muſt be added where it is requiſite, as where the great Feaſts be either to come or paſt.

The Writ of *Sub pœna* is to be ſerved before the Return thereof be paſt, which they uſually do, either by the Delivery of the Writ it ſelf under Seal to the perſon of the Defendant, or by ſhewing the Writ under Seal unto him, delivering him a Note or Labell of the Day of his Appearance; and this is more uſual when there are more perſons than one in the *Sub pœna*, whereby the body of the Writ may be reſerved to be left with the laſt.

For

Or elſe the Writ may be left at the Defendants dwelling-houſe with one of his Family, or at his place of reſidence. See Collection of Orders, &c.

It is conceived it may be a good ſervice to leave the Writ hanging upon the Door of the houſe, or to put it into the houſe under the Door, or within the Window of the houſe where the party doth dwell or uſually reſide at. But that is where it is perſumed it afterwards comes to his hands, or that he might be in the houſe at the time, or had notice of it.

Where a *Sub pœna* is ſerved on the ſelf-ſame day whereon it is rerurnable, it is a good ſervice if it be before Noon, and the riſing of the Court in Chancery: and the Defendant ſo ſerved ſhall be bound to an Appearance with all ſpeed.

Where a *Sub pœna* is had againſt a Husband and Wife, and the Husband alone is ſerved, and hath notice that it is againſt him and his Wife, this is a good ſervice as to both, and for want of Appearance an Attachment may be had, either againſt the Wife onely, or againſt both. To which purpoſe ſee *Caries* Reports 89, 101, 103, 106, 109, 110.

The *Sub pœna* being ſerved, the Bill muſt be put in in due time, or elſe if the Defendant appear, and no Bill filed, they will get coſts. To prevent which, take notice what time is prefixed for exhibiting the Bill after the Day of the Return of the *Sub pœna*.

If the *Sub pœna* be returnable upon a general Return-day, as *Craſtino, Octabis, Tres. Menſe, &c.* after ſuch or ſuch a Feaſt, then hath the Plaintiff time to put in his Bill untill the ſecond day before Noon next following, the fourth day following every of the ſaid Returns, and you muſt account the Return-day, and the fourth day after it for two of the ſaid four days.

But

But where the *Subpæna* is returnable upon such or such a certaine day of the month, then the Bill must be filed the second day after it before Dinner.

Where the Bill is not filed, and the *Subpæna* returnable on a day certaine, as on any day of the Month, the Defendants appearance being entered, his Attorney may prefer costs the next day after: And if the Bill come not in the next day after costs so preferred before noon, or presently after Dinner, the Defendant is discharged with such costs as the Master of the Court taxes him.

Where the *Subpæna* is made returnable on a return day, in such case the next day after the fourth day is costs-day; and if the Bill come not in the next day at noon, or presently after dinner, (the *Defendant* having preferred his costs the day before) is discharged upon Atttendance with his costs.

Where the costs are not voluntarily paid for want of a Bill, either by the *Plaintiff* himself, or his Clark, to the *Defendant* or his Clerk, in such case the *Defendant* may have a *Subpæna* whereby to command the *Complainant* presently upon sight thereof to pay the *Defendant*, or the bringer thereof the said costs: And this *Subpæna* must be served on the *Plaintiff* personally, and upon such service, if the *Complainant* do refuse to pay the said costs accordingly, in such case the *Defendant* may (upon *Affidavit* made, that the *Subpæna* for costs was served) have an Attachment directed to the Sheriff of the County where the *Complainant* lives, to attach the *Complainant* for the said Costs.

And if the Sheriff of the County make return upon that Attachment, that the Complainant cannot be found, then an Attachment with Proclamation may be sued forth against him: And that Procla-

tion being likewise returned by the Sheriffs as aforesaid, then a Commission of Rebellion may be sued forth against the complainant.

On the other side, if the Plaintiff do in due time file his Bill, and the Defendant appeareth not the next day after costs day, then the complainant upon Oath made, that the Defendant was served with a *Subpœna*, may have an Attachment, and further processe, in case the Sheriff return, The party is not to be found, *&c.*

The *Affidavit* that must be made of the Service of the *Subpœna*, must be made according as the manner of the Service was: for if the *Affidavit* made do not prove a good service as before, no Attachment can be had upon it, and therefore he must swear as followeth.

That he delivered the *Subpœna* to the Defendant, or that he shewed the *Subpœna* to the Defendant, under the Seale of the Court, and delivered to him a Note of the day of his appearance, or a Labell of the *Subpœna*.

Or that he left the *Subpœna* at the Defendants dwelling house or lodging where the Defendant most abideth.

Or he may make *Affidavit*, that he heard the Defendant confess that he was served with a *Subpœna*.

If the party that makes *Affidavit* can sweare, that he saw another (naming him) so serve the Writ as before; this will be sufficient to maintain the Attachment.

There can be no Attachment regularly made out against the Defendant for not appearing, untill there be a certaine and positive Oath made of the Time, Place, and Manner of serving the *Subpœna*, inserting the return of the Writ.

And where any person served with a *Subpœna* do injury,

injury, or wrong, either by word or deed to the party who acted in the Service of it, or doth set at naught, or contemn the Writ it selfe, or the Authority of the Court from whence it issues, upon Oath made thereof, and motion thereupon, such person will be committed to the Fleet, *&c. Caries Reports*, 19.92.110.

Where there is appearance made by the Defendant within the time limited, and by the Bill filed: In such case the Complainants Attorney may give unto the Defendants Attorney on the said day after the costs day, a Rule, that the Defendant do make answer to the complainants Bill by the same day seven-night then next to come: this rule and day must be entered into the Register; and in case the Defendant faile to make answer, by that prefixed day so entred, or if he do not otherwise satisfie the Court by shewing sufficient cause and occasion of such his delay, then the complainants Attorney may have an Attachment against the Defendant.

Now this writ of Attachment cannot be duly had, but where the *Subpœna* foregoing is duly obtained and served, for if the *Subpœna* be counterfeit, or if true, and not legally served, this Writ of Attachment in these cases is unduly obtained, and the Defendant arrested by it, upon disclosing the matter to the Court, will be discharged thereof.

An Attachment duly gotten for not appearing, may not bo discharged, till the Defendant have first paid twenty shillings costs, if the serving of the *Subpœna* were upon his person, otherwise it is ten shillings, and every succeeding process double so much: And upon payment hereof he is to be discharged of course: See *Caries Reports*, 32. 72. 79. 94. 105. *Tothill*. 15.

The Husband appeared, and the Wife not, an Attachment

ment was granted againſt them both: *Abells* Caſe 19. *Eliz. Caries* Reports, 65.

So he alone appeared, and put in a Demurror, in both their names, without excuſing her, Attachment was granted againſt both; *Spicers* Caſe, *Caries* Reports, 39.

The *Defendant* made Oath, he could not anſwer without ſight of Evidences, & had time given him, and then afterwards put in a Demurrer: this Writ went out againſt him, *Paſch.* 21. *Eliz. Farmers* caſe.

Where the *Defendant* is ſerved with a *Subpœna*, and afterwards for not appearing an Attachment iſſues againſt him; if he do not appear upon the Attachment, and the Sheriff do thereupon return (as in the like caſes he doth) a *Non eſt inventus*, then there will iſſue forth againſt him a Proclamation of Rebellion, wherein obſerve, that this proceſſe of contempt, and all Attachments in proceſſe are to be diſcharged upon the *Defendants* payment, to tender to and refuſall of it, by the *Plaintiffs* Clark of the ordinary caſes of Court, and filing of his Plea, anſwer, or Demurror, as the caſe is, without any motion in Court: And if the *Plaintiff* do proſecute the contempt afterwards the *Defendant* will be diſcharged with coſts.

Where an Attachment is had, if the Sheriff doe not make his Return, a day will be given, and if he do not by that time, the Court will ſet an Amerciament upon him: See *Caries Reports*, 44. 77. 78. *Collection of Orders, Tothill* 15.

Where any party is attached, and afterwards proclaimed, and he comes not in, but ſtands further out in contempt, in ſuch caſe a commiſſion of Rebellion may be iſſued forth againſt him for the apprehending of him and bringing him to the *Fleet* (the proper Priſon of this Court.)

This

This Commiſſion of Rebellion is ſometimes directed to the Sheriff, and ſometimes to private perſons, as in the caſe of *Cage* and *Elhington*, *Trinity* 30. *Jacobi*, *Tothill* 37.

This courſe is likewiſe taken againſt thoſe that make not obedience to Orders or Decrees, to pay coſts or the like.

Where thoſe private perſons who are made Commiſſioners, having taken the perſon in contempt, ſuffer him to eſcape, they themſelves will be committed till they bring him in; as in the caſe of *Sachaverell* againſt *Sacheverell*, *Hillary Term*, 18. *Jacobi Tothill* 38.

If any perſon reſcue one taken upon a commiſſion of Rebellion, the Reſcuer is to be committed.

Where the Commiſſioners upon commiſſion of Rebellion, let the party in contempt goe where he liſted, whereby he made an eſcape, they were ordered to be committed to the Fleet till they pay the Debt: See *Nelſons* caſe againſt *Yelverton*, *in Trin.* 18. *Jacobi*, *Tothill* 39.

Where the party appears not, but ſtands further out in contempt, a Serjeant at Armes may be ſent out to take him, and if he cannot take him, or that he reſiſt, or having taken him, he make an eſcape, and ſo perſiſt high in his contempt, in ſuch caſes a Sequeſtration may be had of his Land: And if the Suit be for Land, a Sequeſtration and Injunction for the profits of the Land, to be delivered to the Plaintiff by the Sheriff, or by other Commiſſioners for that purpoſe: as in the caſe of *Boles* againſt *Walley* and his Wife. *Caries* Reports, 38. 58. 105 106.

We proceed now to Bill and Anſwer.

THE Plaintiffs Bill is in effect the ſame that the Declaration after appearance had, is, either in the Upper-Bench or common Pleas, and laies down the cauſe of his complaint in Chancery, being ſuch uſually as is exempt from remedy at common Law, for that they inſert commonly theſe words in the Bill, that the Plaintiff hath not remedy at Law.

This Bill by the practice of the preſent times may be put in after the *Subpæna* is both taken out and ſerved, provided it comes in within the time before limited, to prevent coſts.

Upon one and the ſame *Subpæna* ſerved, two Bills may be put in, provided the matter contained in them appear not to be one and the ſame cauſe, for if it do ſo, one of them may be diſmiſſed with coſts and where two Bills are ſo put in containing ſeverall matters, the Defendant muſt anſwer them both.

This Bill in Chancery, and all ſubſequent Pleadings and proceedings upon it, muſt be ſuccinct and ſhort, and not ſtuft with repetitions of Deeds, Writings, or Records, (*in hæc verba*) but the effects and ſubſtance of ſo much of them only as is pertinent & materiall to be ſet down, and that in brieſe terms, without long and needleſſe Traverſes of ſuch things not traverſable, tautologies, or impertinences.

It muſt not likewiſe contain any matter criminall or ſcandalous againſt the Defendant, or any other and if it do, and concern the Defendant, he may refuſe to anſwer it; and the Plaintiff and his Counſell whoſe hand is to the Bill, may be puniſhed for it, and the party grieved may recover coſts againſt ſuch Counſell.

This Bill muſt be put in under counſels hand, who

is carefully to peruse it, if at least it be not drawn by himself, and so that it be such as is before directed, and likewise the Counsell must take care that it be such for the matter of it as the Court will allow, and take Cognizance of, and then he is to signe it.

Where any Bill containes matter not proper for this Court to give relief in, the Bill will be dismissed and so likewise will it be, if there want Counsels hand to the Bill, or if the Counsels hand be counterfeit or disallowed, See *Caries Reports* 89.

To this Bill in Chancery filed, the Defendant is to make answer, wherein many times he makes much delay, but in all cases of delay, he must upon Oath satisfie the Court of the cause of such his delay, which may be in severall respects; as.

First, where the matter contained in the Bill is such, as to which he cannot give answer, without conference had with some other persons named in the Bill, or to whom the Bill refers.

Secondly, where the Bill charges the Defendant with the having of Goods or Chattels of the Complainants, to make discovery what they are; in such case the Goods being in the Country, and he here, hee may make Oath he cannot make perfect answer to the Plaintifs Bill without sight and perusal of the Goods: So likewise where he cannot make direct answer, without sight of some Evidences or Writings which he hath in the Country, he may make Oath thereof; but in such cases, that place in the Country where those parties live, Goods or Writings or Evidences lye, must be above twenty miles from *London*, for else he must answer within eight dayes after his appearance, unless further time be given him by order.

Upon Oath made as aforesaid, then his answer

will be ſpared till the firſt day of the next Term following.

There may likewiſe Oath be made by another perſon, either his Solliciter, Servant, or ſome Neighbour to the *Defendant*, that he is ſick, or diſabled for travell without danger of life.

Upon ſuch Oaths made as aforeſaid, if the *Plaintiff* refuſe to allow of a *Dedimus Poteſtatem* on the behalfe of the *Defendant*, for the taking his anſwer in the Country; This Court of Chancery upon motion or petition will order it, and the order that is ſo obtained muſt be careſully entred in the Regiſters Office, and the *Affidavit* upon which the Order is grounded muſt be filed in the *Affidavit*-Office.

Where the *Defendant* doth not appear, or that after he hath made his appearance, he doth not anſwer within the time limitted him, nor by way of excuſe ſheweth any the reaſons aforeſaid, in ſuch caſe an Attachment as is aforeſaid, is awarded againſt him, which Attachment muſt be entred into the Houſe-Book of the ſix Clerks Office, and likewiſe in the Regiſters Book, expreſſing the cauſe of the iſſuing of the ſaid Attachment.

Where there is no day by rule given to the *Defendant* to anſwer, in ſuch caſe, the *Defendant* is at liberty to anſwer at any time during the Term.

And wher the *Defendant* makes default within that time to make anſwer, then an Attachment may be ſued forth againſt him of courſe, and the ſame with the cauſe thereof (as before) muſt be entred with the Regiſter (*viz.*) That the *Defendant* appeared, and went away without any anſwer.

Where the *Subpœna* is made returnable ſo neer the end of the Terme, that there cannot be a day given to the *Defendant* to anſwer: in ſuch caſe the

Defendant

Defendant muſt at his perill anſwer by the ſame day ſeven-night next following the day of his appearance, although it be out of Term, for the Court of Chancery is always ſaid to be open.

Where the *Subpœna* is returnable on the laſt return day of the Tearm it ſelfe, then the *Defendant* is at liberty to appear the firſt return of the Tearm following.

But where the *Subpœna* is returnable upon a day certain, although the day be the laſt day of the Tearm, the *Defendant* is bound to appear and yet anſwer by that day ſeven-night next following the ſaid appearance.

In all caſes where the *Defendant* either makes Oath, that he cannot anſwer without Writings, Evidences, *&c.* or conference with ſome other perſon, or that he have a *Dedimus Poteſtatem*, and Commiſſion to take his anſwer in the Country; the *Defendant* muſt at his perill procure his anſwer to be put in before the day after the firſt coſts day of the next Term following, unleſſe it be in Trinity Term; then in ſuch caſe it muſt be put in the ſecond day after the ſecond return, or otherwiſe the Complainants Attorney may upon ſuch his default make an Attachment againſt the *Defendant* for not anſwering by the day prefixed.

VVhere the *Defendant* lives in the Country, and hath a *Dedimus poteſtatem* granted him for the taking of his anſwer to the *Plaintiffs* Bill, it hath been formerly the courſe, that in caſe the Counſell finde cauſe of Plea or Demurrer, that then the *Defendant* ſhould move or petition to have a ſpeciall *Dedimus poteſtatem* by order to anſwer, Plead, or Demur, for that the Commiſſioners upon an ordinary *Dedimus*, had not power to take any thing but an anſwer.

But

But by the late collection of Orders it is ordered, that where the Defendant is ſerved with a *Subpœna ad reſpondendum*, and obtaineth a Commiſſion to anſwer in the Countrey, he ſhall without more words have the ſame liberty thereby to anſwer, plead and demurr, as he had by the originall Proceſs, if he could have appeared in perſon. See collect. of Orders, 29.

Where the Defendant doth demurr, or put in any juſt Plea which he hath, to the diſability of the perſon of the Plaintiff or to the Juriſdiction of the court under the hand of learned Counſell, it will be received and filed, although the Defendant do not deliver the ſame in perſon, or by commiſſion.

And if the Defendant do not put in his demurrer, or Plea into the Paper of Pleas and demurrers, in the Regiſters Office appointed for that purpoſe, within eight dayes after the ſame is put into the Court, that ſo the ſaid Demurrer may be argued before the Lords Commiſſioners as it ſhal fall in courſe; and where this is omitted to be done, the Plea and demurrer is over-ruled of courſe, and the Plaintiff may take forth a *Subpœna* againſt the Defendant, to inforce him to make a better anſwer, and in order for coſts according to the late rules and collection of Orders.

Where a man exhibits his Bill in Chancery, and dies, the Suit depending, who ever have the Intereſt in the thing complained for, whether Heire, Executor, or Adminiſtrator, they may put in a Bill of Revivor againſt the Defendant; or in caſe the Defendant dye, the Plaintiff may exhibite his Bill of Revivor againſt the Heirs, Executors or Adminiſtrators of the Defendant.

Where there is a Bill of complaint exhibited againſt a man and his wife, and the matter contained in

in the Bill wholly concerns the wife, and they both make anſwer unto this Bill, and after they have made anſwer the Husband dies; in this caſe a Bill of Reyivor muſt be brought by the complainant againſt the woman, if he intend to proceed in that Suite; and the reaſon is, for that the woman ſhall not be conſtrained to abide by that anſwer, which ſhee, together with her Husband, or ſolely as wife unto the man, had formerly made to the complainant, for that ſhee was at that time under coverture.

And in caſe ſhee ſurvives her Husband, and continues poſſeſſed or ſeiſed of the thing in controverſie, in *Statu quo*, ſhe may as ſhe ſhall think fit make a new anſwer, and ſhall not be bound up or concluded by that anſwer, which ſhe made during coverture, or ſolely as Wife unto the man: and yet if ſhe thinks fit, ſhe may ſtand to that former anſwer of hers, and proceed accordingly in that Suit.

Where the Plaintiff exhibits his Bill in chancery againſt a feme ſole, and ſhe appearing, makes anſwer unto the Bill, and afterwards marrying, ſhee comes under coverture, the ſuit depending; In this caſe the Plaintiff may proceed againſt her and her Husband, and ſhall not need any Bill of Revivor: and her Husband ſhall be bound by that anſwer, which ſhe made whilſt a feme ſole, for that ſhe ſhall not advantage her ſelfe by her own act.

Where on the other ſide a feme ſole Plaintiff exhibits her Bill, and the Defendant makes anſwer unto it, and afterwards ſhe intermarryeth, here there can be no further proceeds by the Husband and Wife without a Bill of Revivor, becauſe ſhee hath abated her ſuit by her own act of marriage, of which the Defendant may take his beſt advantage.

Where

VVhere the Man and the wife exhibit a Bill of Complaint, and to this the Defendant anſwereth, and the Man dyeth, the VVoman ſhall be at her choice whether ſhee will exhibit a new Bill, or proceed upon the Bill by her Husband and her ſelfe formerly exhibited.

VVhere there are two ſeized of joynt Eſtates, or where they are Executors of one VVill or Obligee, or Obligers; and they prefer a Bill in Chancery, to which the *Defendant* makes anſwer, and after one of them dye, here the Survivor may proceed in his ſuit againſt the *Defendant*, and ſhall need no Bill of Revivor.

Note, that the Bill of Revivor muſt purſue the firſt Bill exhibited; for where there is any variance between them, the *Defendant* may be diſcharged, and the Bill will be diſſolved.

Where there are Adminiſtrators; *Durante minori ætate* of an Infant Executor, in the nature of a Guardian, and they ſue on the Infants behalfe, and the Suit depending, the Infant comes to age, here it ſeems there needs no Bill of Revivor.

VVhere the complainant hath exhibited this Bill of Revivor, and hath procured thereupon a *Subpæna* to be ſerved; he will be upon this in the ſame caſe as the Predeceſſor was, when the Bill firſt accrued, unleſſe ſome good cauſe to the contrary (as that he is not Heire, Executor, nor hath the like intereſt, *&c.*) can by the Defendants anſwer bee ſhewed.

VVhere a man doth willfully refuſe to anſwer, and ſtand out all the Proceſſe of contempt, the Court will take the matter of the Bill *pro confeſſo*, and decree it, *Tothill 69.*

If the anſwer be good to common intent, the Plaintiff muſt reply and prove the matter if he can, and not

not insist upon insufficiency of the answer.

No exception can be taken to an answer after a Replication put in, for it is then admitted to be good, but before Replication it may be excepted against.

But where it is excepted against, the causes must be shewn in writing, and delivered in to the *Plaintiffs* Attorney or Counsell, the same Tearm the answer comes in, or within eight dayes after; and if he amend it in eight dayes, he is to pay no costs.

Where an answer is excepted against to be insufficient, it is usually referred to a Master, to consider of the Exceptions, and he to certifie the court whether it be insufficient.

If the Master certifie it to be insufficient, then the *Plaintiff* may take out Processe for costs, and the *Defendants* answer is not to be received, till he hath paid the costs.

The first answer being returned insufficient, the *Defendant* must pay forty shillings single costs.

If it be an answer that came in by commission, and be insufficient, he must pay fifty shillings.

The second answer insufficient paies three pounds.

The third five pounds costs, and you may have a *Subpæna* both for your costs, and to make a better answer.

But in these cases of exceptions, the insufficiencies appearing in the same exceptions, are the point to be insisted on, and no new exceptions may be moved.

Where the Master upon reference to him finds the answer to be sufficient, and accordingly certifies, there the *Plaintiff* must pay forty shillings costs.

If the Exceptions to an answer be put in after the Term, there shall be time given to answer them untill the fourth day of the next Terme, unlesse the court hasten it.

If

If the answer come in by commission, and be not good, no new commission will be admitted but upon Oath of the inability of the person, and his payment of fifty shillings costs as before.

Where a cause goes to hearing upon Bill and Answer, the same must be admitted to be true in all points, and no other Evidence is to be admitted, but what is matter of Record, to which the answer doth refer, and which is provable by Record if selte: *Cayies Reports* 78. 30.

Concerning Demurrers and Pleas, take these Rules following.

FIrst, A Demurrer is alwayes where there is matter defective contained in the Bill, or where there is forrain matter.

The Plea of forrain matter may be of two sorts; Either where it is to the Jurisdiction of the court, or to the disability of the person, as where the *Plaintiff* is outlawed or excommunicate, or where there is in this or any other court, a Bill or suit depending for this very cause.

Or it may be that the cause hath been formerly dismissed this court, or the like.

Or if the matter of it appear upon Record, it may be put in without Oath, otherwise not.

In case it be a Demurrer, it must expresse the cause of the Demurrer, yet other causes may be insisted on at the time of the determination thereof by the court.

If the demurrer be over-ruled, the Defendant shall pay five marks costs, and where it is allowed, the Defendant shall have no costs.

If

If one plead a plea that is insufficient, and so over-ruled to be, as where it is an Outlawry pleaded, and it is not a good Plea, he must pay five Marks costs.

An Outlawry is not to be pleaded, unless you plead the Record, *sub pede sigilli*.

A plea of Outlawry, if it be in a Suit for the same thing for which a man sueth to be relieved in Chancery, is not to be allowed; but otherwise it is allowed, and will be in force to hinder all the Plaintiffs proceedings, till it be reversed.

But when it is reversed, the Plaintiff upon payment of twenty shillings costs, may upon a new *Subpæna* served, put the Defendant to answer the same bill.

Where the Plaintiff conceives the Plea for matter or manner naught, he may put it to the Judgment of the Court.

Where a man pleads a former suit, he need not set it down with the Register, but it shall be referred to a Master to certifie (which must be done within a moneth upon the Plaintifs procurement.) And if the Master do certefie against the Plaintif, he must pay five shillings costs: If there be no Report within a moneth of filing the Plea, the Bill will be dismissed of course, with seven Nobles coasts.

If the Demurror to any Bill be put in upon any slip or mistake in the Bill, the Plaintif of course laying down to the Attorney twenty shillings costs, may amend his Bill within eight dayes after the Demurror put in, but not after that time.

If the Demurror be admitted by the Plaintiff to be good within eight dayes after the filing of it, and he doth pay the Defendant his Attorney, or Clark in court forty shillings costs, then the Defendant shal not need to attend his Demurror, but the Bill shall stand

ſtand diſmiſt of courſe without motion, unleſſe both ſides agree to the amendment of the ſame, but ſuch diſmiſſion is to be no bar to a new Bill to be exhibited by the *Plaintiff*.

Where the *Plaintiff* finds ſufficient cauſe for an Order in the anſwer, he may goe to hearing thereupon without further proofs, (of which he ſhould be well adviſed) in which caſe he muſt procure his Attorny to preſent the ſame in courſe, to be ſet down to be heard upon Bill and anſwer: But in caſe the Court ſhall not find grounds to make a Decree or finall Order, the Bill ſhall be diſmiſſed with coſts, or the *Plaintiff* admitted to reply, if he deſire it, firſt paying down five pound coſts, within four dayes after ſuch hearing, then the diſmiſſion to ſtand, and the concluſion of the order upon hearing is to be penned by the Regiſter accordingly, and then ſuch diſmiſſion ſhal be a good Plea in Bar of any new Bil for the ſame matter.

VVhere a *Plaintiff* proceeds ſo far as to proof, and upon the hearing it clearly appears the Plaintiff might have had full relief upon Bill and Anſwer, albeit he be releived in the cauſe, yet he ſhall pay coſts. See more fully of theſe things in the collection of Orders 16. 18. *Caries* Reports, 39. 87.

Replication, Rejoynder, and Sur-re-joynder comes next to be handled.

THe Replication is the ſpeech of the *Plaintiff*, in way of Reply to the *Defendants* anſwer.

The re-joynder is the *Defendants* anſwer, to the *Plaintiffs* Replication.

The Sur-re-joynder is a ſecond defence to the Plaintiffs action, oppoſite to the *Defendants* Rejoynder.

First

First, the Replication must be short relating to the substance of the Bill, and it must avoid superfluous and criminous matter.

Secondly, the Replication must affirm and pursue the Bill, and confess, and avoid, traverse, or deny the Answer.

Thirdly, the Rejoinder, that must pursue and confirm the Answer, and must sufficiently confess or avoid, or traverse every material part of the Replication.

Fourthly, no new matter must be put into the Replication, and so much matter onely is necessary to be there, as will avoid the matter of the Answer.

Fifthly, if upon the Answer there be so much confessed, that the Plaintiff need not to draw into Pleading, and prove all the Points, he must see to it, and reply, and go to proof onely in those Particulars in question, and necessary to be proved.

Sixthly, when the Defendant doth demur or disclaim to any Bill exhibited against him, the Plaintiff cannot reply. And if the Defendant in those cases be served with a *Sub pœna ad rejungendum*, having before made no other Answer, but a Demurrer or Disclaimer, he shall have costs for unjust Vexation.

Where the case is such, that the parties cannot come to Issue, by reason of some new matter disclosed in the Defendants Rejoinder, that requires to be answered unto, the Plaintiff may sur-rejoyn to the Rejoynder, and the Defendant likewise to the Sur-rejoynder, if there be cause.

As for the time for the Replication to be put in after the Answer, you are to observe that the Plaintiff

hath time for all this Term, and all the next Term, and untill the begining of the ſecond Term following, to put in his Replication.

The next Term after the Anſwer is put in, the Defendant may give the Plaintiff Rule to reply: and if ſuch Rule be given, and the Plaintiff reply not, coſts will be given againſt him.

And where he gives no Rule, and the Plaintiff doth not reply the ſecond Term, after the Term, the Anſwer is put in, the Bill will be diſmiſſed with the coſts of courſe.

But in caſe the Plaintiff doth reply, and that the Replication be in Court, the Defendant can have no coſts.

In caſe where the Complainant hath replied, the Defendant may if he will rejoyn *Gratis* to the Replication, and force the Complainant to joyn in Commiſſion.

Where the Plaintiff intends to go to Commiſſion, he muſt ſerve the Defendant with a *Sub pœna ad rejungendum*, before he can have Commiſſion to examine Witneſſes, and upon Return of the *Sub pœna ad rejungendum*, and Oath made of the ſerving of it, the Plaintiff may by entring Rules, force the Defendant to rejoyn and joyn in Commiſſion, or go on to the examining of Witneſſes without him; for having given him ſeven days to rejoyn, if within that time he refuſe to do it, he cannot do it after.

In ſuch caſe where the Defendant is ſerved with a *Sub pœna ad rejungendum*, and does not upon the Plaintiffs Clerks Demand to the Defendants Clerk, deliver Commiſſioners names by the end of the Term

Term, wherein this *Sub pœna* is returnable, there the Plaintiff may without Motion or Petition, give names, and take a Commiſſion, *ex parte*. See *Caries* Reports 111. and Collection of Orders in Chancery.

The manner of joyning in Commiſſion, and executing of it.

IN the joyning of this Commiſſion to examine Witneſſes, the Complainant muſt firſt name one Commiſſioner, unto whom the Defendant may give general Exceptions.

The Defendant is to name the ſecond.
The Complainant the third, and
The Defendant the fourth.

The Plaintiff is likewiſe to have, firſt the taking out, and carriage of the Commiſſion, as oft as any is ſued out, and he or his Commiſſioners muſt give either in perſon, or by a note left in writing, at the place of the uſual abode of the other party, fourteen days notice to him, of the time and place of executing the Commiſſion, and if there be default then made by the Plaintiff or his Commiſſioners, in the excution thereof, he muſt pay the Defendant ſuch coſts as he upon his Oath ſhall make appear he was put to in the intending of the Commiſſion, and the Plaintiff muſt renew the Commiſſion at his own charge, and the Defendant ſhall have the carriage of it. And ſo on the other ſide ſhall the Plaintiff have, if the Defendant have the carriage of the Commiſſion, and it be loſt by default of his ſide.

But where it becomes void by any Errour of the Clerk in making it, the coſts ſhall be born by him, and that ſide for whom it was taken out.

Where the Defendant hath the carriage of the Commiſſion, he muſt give notice to the Plaintiff, as is before directed; and if ſuch notice be not given, either all the Examinations will be quaſhed, or otherwiſe the Court will grant to the other ſide a Commiſſion *ex parte*.

Whe e there hath been Publication, there no Commiſſion can be granted or renewed for examining Witneſſes without ſpecial Order.

Where a Commiſſion hath been to examine Witneſſes, without Reference and Certificate upon it, it cannot be diſcharged upon a bare Petition.

Where a Commiſsion is taken out by conſent, and the one ſide at the ſpeeding of the Commiſsion do put in no Interrogatories, nor examine any Witneſſes (unleſs upon a Motion, and by Order of the Court) he ſhall be never after admitted to have a new Commiſsion.

Where the Defendant had Witneſſes to examine, and they being ſerved did not appear, but make default, here a new Commiſsion will be granted to the Defendant, *Caries* Reports 91. 43. *Tothill* 111. collection of Chancery Orders.

Touching the choice of Commiſſioners, or Examiners, and the Exceptions againſt them.

FIrſt, they muſt be men indifferent.

The Exceptions uſually taken againſt them are, that he who is named Commiſsioner is of kindred

dred, or allied to the party for whom he is named, and ſo may very well be deemed to ſide with that party.

Or that he is Maſter to the party for whom he is named, or that he is Land-lord to the party, or that he is of his Counſel, or Attorney for him, or one to whom he is indebted, or one that hath a Suit with the adverſe party.

The Commiſſion being to be ſet upon at the time and place appointed, the Commiſſioners muſt call the Witneſſes before them, where if they appear not, an Attachment iſſues againſt them, unleſs it be in ſuch caſe where the Witneſſes are impotent, and then a Commiſſion ſhall be awarded, to examine them where they be, but uſually they will have coſts before they anſwer.

When the Witneſſes appear to be examined, the Commiſſioners and Examiners muſt examine them themſelves, and not leave ſo weighty a buſineſs to the truſt of their Clerks, or others to do it.

They are to hold the Witneſſes to the point inſiſted on.

They ſhould examine them but to one Interrogatory at a time, and ſee that anſwered firſt, and at one time.

They are to take what comes from them in anſwer to what they are examined, and not upon their ſight of all the Interrogatories, to let them ſet it down themſelves.

After they have been examined, upon better thoughts they may force them to attend their Examinations. They ought not either to ask them idle queſtions beſides the matter of the Interrogatories, nor ſet down impertinent Anſwers.

They are to ſet down truly their ſayings in Parchment, and that done, they are to ſet their hands to

every Schedule-examination, and ſend them up into the Court as they are taken, with a Certificate.

Where the Commiſſioners meet with any obſtruction in the work, they muſt certifie that alſo.

After the Commiſſion is duly executed, and that it be returned up, one of them muſt deliver it in Court, or they muſt ſend it by one that muſt make Oath, that he received it from one of their hands, and that it was not altered to his knowledg.

If any one of the Commiſſioners commit any miſdemeanour about Examination, the party grieved, upon Oath of it, may have the Attachment againſt him, and cannot have a Commiſſion to examine it upon the Certificate of the other Commiſſioners.

Where there is a diſagreement of the Commiſſioners, or where there is any other ſpecial cauſe that obſtructs the Commiſſion, they may have an Examination ſent down on purpoſe to do it. See *Caries* Reports 30,31,40,47,80,81. *Tothill* 189.

The interrogatories to examine Witneſſes muſt be ſucciſe and apt.

When Witneſſes are examined in Court upon a Schedule of Interrogatories, you cannot examine the ſame Witneſſes upon putting in new Interrogatories.

Witneſſes may be examined as well by Examiners in Court (in caſe they live in or near the Town) as by Commiſſioners in the countrey.

Either party, as well Plaintiff as Defendant, after anſwer put in, untill publication be paſt, may examine what Witneſſes they pleaſe in Court, before one of the Examiners; but before Anſwer, and after publication no Examination will be allowed, but by ſpecial Order, ſome ſpecial cauſe being ſhewed.

Notice muſt be given both of the names and dwelling

dwelling places of the persons examined, in all cases of Examination.

After an Order for Publication, and that delivered to the Examiner, no Witness may be examined in Court, though he were sworn before, *Caries* Reports 27,58,93. *Tothill* 189,190,192.

Touching Deposition of Witnesses.

NO abstract, or Copy of the Deposition of the Witnesses, is to be delivered till Publication be past.

No Deposition of Witnesses may be suppressed upon a bare Petition onely, without Reference and Certificate upon it.

Where there are several Causes which are meerly cross Causes between the same parties, and touching the same matter, there the Deposition of Witnesses in the several Causes may be used at the Hearing of both Causes (being heard together) without any motion.

Where Depositions are regularly taken, they may not be suppressed by motion; but the Depositions of Witnesses appearing to this Court to be gotten by practice, may by Order of the Court be suppressed. Deposition of Witnesses taken in this Court, may by Order of the Court be made use of in any other Court, *Caries* Reports 35,56. Collection of Chancery Orders.

He that will examine Witnesses (*in perpetuam rei memoriam*) to preserve a Testimony, he must first exhibit his Bill, and shew his Title to the thing, and that the Witnesses to prove it are old, and not like to live long, whereby he is in danger to lose it, and

then pray a Commiſſion to ſome Gentlemen of credit in the country to examine them, and a *Subpœna* to the parties intereſted, to ſhew cauſe if they can to the contrary.

If the party intereſted being duly ſerved within fourteen days ſhew cauſe, the Plaintiff muſt deſiſt; if he cannot, he may go on alone; if the other will not joyn with him, as he may if he will, and then fourteen days warning is to be given for Execution.

The Court in this caſe will appoint Commiſſioners, and give Articles to examine upon, or they may be examined in Court by an Examiner.

None but aged and impotent perſons may be examined upon this Commiſſion.

Where the Defendant takes Exceptions to the Proceedings in ſpeeding the Commiſſion, as whether he did appear or not, and whether Oath were made before them of notice given to him of the time and place of Execution thereof, in ſuch caſe the Commiſſioners muſt certifie up with the Commiſſion the Exceptions the Defendant ſo took.

This Teſtimony taken upon this Commiſſion, is not to be publiſhed while the Witneſſes live; but in ſome caſes, as either by conſent of the parties, or upon Oath made, that either the Plaintiff hath ſome Trial at Law, wherein he ſhall need it, and that the Witneſſes are not able to come to the place, or otherwiſe by Order of the Court, and then the Commiſſion is to be opened by a Maſter, and to be conſidered of, and afterwards it may, if the party will, be exemplified, and may by Order of this Court be given in Evidence in any other Court.

Theſe Depoſitions thus taken, ſhall not be made uſe of to be given in Evidence againſt any other, but the Defendant who was warned to defend it, his Heirs or Aſſigns, or ſome other claiming by, or under him,

by

by ſome intereſt which accrued unto him, after the Bill preferred, *Tothill* 189. 190, 191, 192.

Where both Plaintiff and Defendant have examined what Witneſſes they pleaſe, and are ready to go to Hearing, then either of them muſt firſt give the other a Rule for Publication; if it be the Plaintiff that gives the Rule, then thus (Day is given to the Defendant of Publication upon the Commiſſion joyned) and if the Defendant give the Rule, then on the contrary thus (Day is given to the Plaintiff for Publication upon the Commiſsion joyned.)

The Day ſo given is one Week, which being expired, and no cauſe ſhewn to the contrary, then Publication is granted.

After Publication ſo granted, neither party can examine Witneſſes, unleſs it be by ſpecial Order of the Court, which is not granted without an Oath made, that the party which requireth the ſame, nor any of them hath ſeen, or been made privy to any Examinations of any the Witneſſes formerly examined in this Court by either of the parties, and ſome good cauſe be ſhewn either by Oath or Certificate of Commiſsioners, why the party could not get his ſaid Witneſſes examined within the time limited for their Examination; in which caſe ſometimes the Court giveth Order to examine Witneſſes by a time prefixed, with this Proviſo, that the party ſhall not in the mean time ſee the ſaid former Examination.

Touching ſetting down the Cauſe for Hearing.

AFter Publication had, the Plaintiff, or in his neglect, the Defendant may procure a Day of Hearing of courſe, to be ſet down by his Clerk at the end of the Term, when the Lords Commiſſioners do ſet down Days for Hearing the next Term.

The Days muſt be ſet down according to their priority of Publication.

No Cauſe muſt be preſented for Hearing, the ſame Term that Publication doth paſs.

All Proceſs to hear Judgments muſt be returnable ſix or ſeven days before the Day of Hearing, except it be in the begining of the Term, when the time will not bear it; and the Writ muſt have on the back of it the very Day of Hearing.

If the Plaintiff appear not, the Defendant is to be diſmiſſed with coſts, *Caries* Reports 45. collection of Orders in Chancery.

Touching Decrees take theſe enſuing Rules.

EVery Decree muſt be drawn up as ſhort as with conveniency it may, and not recite the Pleadings largely, but the ſum of it briefly.

If the Decree be made before the Maſter of the Rolls, or before any Judges, it being drawn, muſt be firſt ſigned by them, and after by the Lords Commiſſioners, and then it muſt be inrolled.

The Decree muſt be ſigned and inrolled before the firſt day after the next *Michaelmas*, or *Eaſter* Term after the making of it.

Where

Where the Decree concerns Lands or Leaſes, it muſt be entred into the Regiſters Dockquet-book, within ſix moneths after the making of it, otherwiſe it ſhall not prejudice the Purchaſers of the Land.

No Decree ſhall be binding to any but thoſe who are ſerved with Proceſs, *Ad audiendum judicium*, or that did appear *Gratis*.

The Purchaſor that comes in by conveyance, *Bona fide*, from the Defendant before the Bill exhibited, and that is no Party by Bill or Order, ſhall not be bound up by any Decree.

But where a man becomes a Purchaſer (*pendente lite*) and without any colour of privity, or allowance by the Court, there it ſhall regularly binde him; yet in ſuch caſe, if there have been any intermiſſion of the Suit, or the Court be acquainted with the conveyance, the Court is to give order in it.

No Decree made by this Court can be croſſed, altered, or explained upon a bare Petition onely, and yet hereby it may, for ſome ſpecial reaſons, be ſtaid for a while, till it can be moved in Court.

A Decree of this Court once inrolled cannot be reverſed or altered but by a Bill of Review, unleſs it be in caſe of miſcaſting, where the caſe is demonſtrative, and then it may be done by order.

A Decree will binde the perſons, for where any do refuſe to obey it, this Court will impriſon him untill he do conform.

A Decree of this Court doth binde the right and title to Lands and Goods; for this Court by their Order of Sequeſtration and Injunction doth diſpoſe of the Poſſeſſion thereof for ever to him, the Court judgeth to have right thereunto in conſcience.

Where a Decree is to be made upon a pretence of

of Equity againſt the Judgment of another Court; this Judgment is firſt read, and then the Decree is not to vacuate the Judgment, but to order the unreaſonable party.

The courſe of the Court to inforce obedience to their Decrees, and to puniſh the breach of them.

Firſt, they are to ſerve the party with the Decree it ſelf, under the Seal of the Court; and if he yield not obedience unto, but ſtands obſtinate, they then proceed to take out of the Court all the Proceſſes of contempt againſt him, one after another, and the party being taken, is to be ſtraitly impriſoned, and not to be ſet at liberty till he yield obedience to it, (that is to ſay) That he perform that part of the Decree, which is preſently to be done, and give ſecurity to peform that part which is to be done for the future.

Alſo the Lords Commiſsioners for his contempt may fine him what they pleaſe, and afterwards extreat.

Where the Decree is for Land, and the party remain obſtinate and wilfull after his impriſonment, the Court doth uſe to grant an Injunction for the Poſſeſsion; and this being diſobeyed after it is ſerved. and Oath made thereof, the Court doth in that caſe grant a Commiſsion to ſome Juſtices, and if need be, a Writ of Aſsiſtance to the Sheriff, to put him in poſſeſsion. See *Caries* Reports 23,34,36,37. *Tothill* 56, & 57. collection of Orders in Chancery.

Where this Injunction is granted for poſſeſsion of the Land, and the party ſits out all the Proceſs

of

of contempt, and cannot be found by the Serjeant at Arms, or make a Reſcue, a Sequeſtration ſhall be granted of the Land, *Tothill* 107.

This Sequeſtration is granted ſometimes as well of the Goods, as of the Profits of a mans Land, and that for his wilfulneſs in ſtanding out in contempt, and diſobedience to the Court; as well where it is for diſcharge and payment of Debts and Duties, as where the Decree is for the payment of a ſum of money, *&c.* *Tothill* 175,176.

Concerning Contempts.

IN caſe of contempts upon force, or ill words uſed upon ſerving of Proceſs, or other words of ſcandal to the Court, if they be proved by *Affidavit*, the party forthwith upon Motion will be committed, if the words ſpoken deſerve it.

For other contempts againſt the Orders and Decrees of the Court, take as follows.

Firſt, an Attachment goes forth upon *Affidavit* made of the contempt.

Then the party being taken is to be examined upon Interrogatories, which is uſually upon Motion referred to one of the Maſters in the Chancery.

The contemptor coming in *Gratis*, or upon Proceſs, ſhould give notice to the Clerk of the other ſide of his Appearance; and if then there be not Interrogatories put in within eight days, or being examined, if no Reference be of the Examination, or Commiſſion taken out by the other ſide, nor Witneſſes examined to prove the contempt in a Moneth; the contemptor ſhall be diſcharged, and ſhall recover coſts, taxed by a Maſter without any Motion.

If

If after he hath appeared upon the Contempt, he depart, not examined, he muſt ſtand committed till he be examined and cleared, and if it be found, he muſt clear it, and pay coſts ere he be diſcharged.

Such as ſtand committed for Contempts upon Attachments, or Commiſſions of Rebellion, muſt enter into Bond to attend from day to day, not to depart without leave of the Court, *Caries* Reports 9, 44,70,71,82. Collection of Chancery Orders.

Impriſonment upon Contempts for matters paſt, may be diſcharged of Grace, after ſufficient Impriſonment, or it may be otherwiſe diſpenſed withall in ſuch caſe.

But where the Impriſonment is for non-performance of any Order of the Court in force, then the perſon ſo in contempt ought not tobe diſcharged, except the firſt obey, onely the Court may diſpenſe with the contempt for a time.

Concerning Bills of Review.

A Bill of Review ſhall not be admitted, except the Decree be firſt obeyed and performed.

No Bill of Review ſhall be put in, except the party that prefers it enter into a Recognizance with Sureties, for the ſatisfying of coſts and damages for the delay, if it be found againſt him.

Where a Cauſe is diſmiſſed upon full Hearing, and the diſmiſsion ſigned and inrolled, it cannot be retained again but by a Bill of Review, and that in ſome ſpecial caſes.

No Bill of Review is grantable but upon Errour in Law, appearing in the body of the Decree it ſelf, without Averment or further Examination of any

any matter of Fact, which might have been had at the time of the Decree, unleſs he ſhew ſome new matter which hath riſen in time after the Decree, whereof the Plaintiff could not have advantage of before: and then upon Oath made that there is a diſcovery of ſuch new matter, this Bill (by leave of the Court) may be exhibited.

But he that ſo obtaineth this Bill muſt firſt give ſecurity by Recognizance to a Maſter, as is before directed.

Where the Decree is to yield the Poſſeſſion of Land, deliver Writings, or to pay Money, he muſt firſt perform that before a Bill of Review: but if the Decree be to extinguiſh a Right, convey Land, releaſe a Debt, acknowledg ſatisfaction, or to cancel Records or Evidences, or the like, it may be ſtaid by the Order of the Court, till the Bill of Revivor be determined.

No Witneſſes which either were, or might have been examined upon the former Bill, ſhall not upon this Bill of Revivor be examined to any matters: collection of Orders in Chancery, *Tothill* 273.

Having now gone through the general proceedings of Chancery upon Bill and Anſwer, there are ſome things which in ſome Caſes are eſſential to thoſe Proceeds, which take as follow; and firſt concerning Injunctions.

THis is looked upon according to the general acceptation, as that which makes ſtay of Proceedings at Common Law, although in many caſes it is like-

likewise to the end to gain the Possession of Land in some cases it precedes, and in some cases it is subsequent to the Decree, and sometimes by writing, and other times by word of mouth, as when the party who is to be inhibited, is present in Court.

Where it stays Proceedings at Law, in some cases it gives leave to go to Trial and Judgment, but stays Execution.

Where the matter of Law is tried, it bars them from Judgment as the case may be.

Or where there is a Judgment, and that executed, it will stay the money in the Sheriffs hands, after the party is arrested at Law for the money.

This Injunction is commonly procured either upon some Writing, or matter of Record plainly appearing; or upon a very old Debt that hath slept long, Creditor and Debtor being both dead; or in such cases where the Defendant doth not appear, but sits an Attachment, or if he appears, either answers not the Bill, or confesses so much thereof as is sufficient.

Where either the Defendant is beyond the Seas, or being in the Kingdom, doth absent himself, so that he cannot be served, or where upon any pretence he hath gotten time to answer, the Court doth usually in those cases grant an Injunction to stay Suit, till the Defendant doth appear.

Where there is a Commission granted to take an answer in the countrey, an Injunction will be granted to stay the Defendants Suit at Law, (if any be) till the Answer come in, and of this the Defendant must take notice without any serving of it.

Where there is a Verdict at common Law in an Action of Debt, and a Bill be afterwards exhibited for relief, here the money must be deposited in Court, before the Court will grant an Injunctiion, unless in some

ſome caſes where ſome ſpeciall matter in Equity appears by the Defendants anſwer, or in ſome former Decree.

Where a perſon priviledged in this Court is ſued elſe where, he may ſtay that Suit by this injunction.

Where Timber is unjuſtly felled; Ancient Meadow ground plowed up, ancient paſtures that have not been plowed up in twenty years before, or for the maintenance of incloſures kept in for 20 yeares before, there it is grantable according to the caſe.

Where an injunction is granted to quit a poſſeſſion, it is granted of houſes and Land onely, and not of Rent or ſuch like thing, and it is not to be granted before the hearing of the cauſe, unleſſe upon oath, that the Plaintiff was in poſſeſſion at the the time of the Bill put in, and then onely of that poſſeſſion he had then, and three yeares before, and at the time of the motion, and not to be extended to the poſſeſſion of thoſe from whom he claimes: And this ſhall not hinder the Defendants Suit in Law, making of a Leaſe, taking of Diſtreſſe, *&c.* And this injunction where the Plaintiff delayes his Suit is to be diſſolved again.

Where it is to ſtay or remove a Suit by *Certiorarie*, Bond muſt firſt be given that the Bill hath matter ſufficient in it to beare it, and ſhall be proved true within fourteen dayes after he hath the Writ; and this if he doe not in this time, after a certificate of his neglect from the Examiners, it ſhall be diſmiſſed with coſts, and a *Procedendo* granted.

Where the injunction is to be obtained by motion for matter in the anſwer, there the Counſell muſt put the caſe in writing to the Court.

Where it is granted upon the merit of the cauſe, or upon ſpeciall cauſe in Equity, it is to ſtand till the hearing, unleſſe the Plaintiff delay his Suit.

This injunction muſt be ſerved either on the

party himſelfe, his Counſellor, Attorney, or Sollicitor, *&c.* as the caſe requires, and the manner of the ſerving it is much like the ſerving of a *Subpæna.*

A bare petition only will not diſolve this injunction, nor if it be had by motion is it to be diſſolved without motion of the adverſe party.

Where an injunction is granted till the anſwer be put in, and no order be made to continue it, within fourteen dayes after the anſwer is come in; in this caſe it ſhall be diſolved upon the Regiſters certificate thereof only; and if no motion be made that Term, or at the next general ſeale after the Term; to continue it for inſufficiency of, or matter confeſſed in the anſwer, it is diſolved of courſe; ſo where it is to ſtay a Suit at common Law, and the Plaintiff doth not proceed for three yeares together.

Where the injunction is diſobeyed (if you would force obedience thereunto) upon Oath made thereof, all the Proceſſes of contempt are to go out againſt him, one after an other, and being taken, he is to be impriſoned, till he doe yeild Obedience to it or give ſecurity to doe it; nor is he to be heard in the Principall caſe, till he yeild Obedience in every thing in the Injunction, *Tothill* 107. *Caries Reports* 112. 113.

Touching diſmiſſion, take theſe things following.

THis is prayed by motion, and had upon Plea to the Bill, or hearing of the cauſe, and not after Examination of witneſſes before hearing, but upon a diſcontinuance of proſecution, by motion and order of the Court.

Where

Where the Plaintiff diſcontinues his proſecution after all the Defendants have anſwered, above the ſpace of one Terme, the cauſe is to be diſmiſſed of courſe, but after a Replication put in, it cannot be diſmiſſed without an Order upon motion.

Where a cauſe is diſmiſſed upon a full hearing recorded and certified by the Lords Commiſſioners, it cannot be againe retained, or a new Bill admitted, but where there is new matter.

Where the Bill is duly diſmiſt of courſe, or by order, no motion will be heard to retaine it, till the coſts aſſeſſed upon the diſmiſſion be paid, and certified from the Attorney on the other ſide, that it is done.

No diſmiſſion, or Retainer upon a diſmiſſion will be granted upon bare petition only.

In caſes of diſmiſſion not upon a full hearing, to a new Bill this may be pleaded.

But for the cauſes of diſmiſſion, the Court will retaine and diſmiſſe as it doth ſee cauſe: See Collection of Chancery Orders, *Caries Reports* 34.43. 74. 76. 110.

Touching References, and Reports, take as followes.

WHere there is a Demurrer to the Juriſdiction of the Court, there no Reference may be had to a Maſter upon it, but it muſt be heard before the Lords Commiſſioners themſelves.

After Examination of Witneſſes is paſt, there can bee no reference had to a Maſter to end and determine, unleſſe it be in caſe of neere kinne, poverty or conſent of parties.

A reference of the State of the caſe is ſparingly granted, unleſſe where there is conſent of the parties.

The Examination of Court-Rolls is to be by reference, but there it muſt be to two Maſters at the leaſt.

No reference ſhall be made of the inſufficiency of an Anſwer, without allegation of ſpeciall cauſes: See the Collection of Chancery Orders.

The Reports of the Maſter upon the Reference muſt not exceed the warrant of Reference, which is the Order of Court by which it is referred to him.

After the Maſter hath ſeen the Order, he uſually grants out a VVarrant, which is ſhewen unto the other ſide, whereby he gives notice of the time of his hearing the cauſe, where the other ſide with their Counſellor, or Sollicitor, may as they ſee cauſe attend.

The Report it ſelfe is uſually briefe, and with ſome opinion, if the caſe be not very doubtfull, and if ſo, then it muſt be ſet forth the ſpeciall caſe.

No order can be had to confirme the Report, till it be firſt filed with the Regiſter, under the Maſters hand, and a day given to the other ſide, for ſeven dayes at the leaſt, to ſpeake to it in Court; and yet where it is not to ground a Decree, and it be poſitive, it is to ſtand, and Proceſs may be taken out for the performance thereof, unleſſe the adverſe party upon notice thereof, do within eight dayes after (if it be in the Term time) or if the generall Seals for motions, or if after within four dayes of the beginning of the the next Term, get it controlled.

VVhere there is an appeale to the court from the Report of a Maſter, the party that doth ſo appeale, muſt depoſite forty ſhillings with the Regiſter, and a day will be ſet for the Judgment of the court, and

if

if the Court do adjudge it againſt the Appealor, the other ſhall have the forty ſhillings, and what more the Court ſhall judge fit; if otherwiſe, the money ſhall be reſtored. See collection of Chancery Orders.

The matters chiefly under reference are either inſufficient Anſwers, or matters of account.

Where the Maſter upon a reference to him reports the Anſwer to be inſufficient, the Complainant may take out two *Subpœna's* againſt the Defendant, the one for twenty ſhillings coſts, and the other to make a better Anſwer.

Touching Orders, and the Regiſter that draws them.

THe Regiſters being ſworn do ſit in Court, and take notice of all orders the Court doth make, and take ſhort Notes in their Book, by which to draw up ſome more full remembrance of that which paſſed in Court.

Where any order ſhall be made, and the Court not informed of the laſt materiall Order, formerly made, no benefit ſhall be taken by ſuch Order as being ſurreptitiouſly procured, and to that end the Regiſter doth mention the laſt former order in the preſent Order.

An Order made out of the generall rule, muſt ſet down the ſpeciall reaſons of it.

No order ſhall be explained by Petition, but by publick motion, both parties being heard.

No order but finall Orders and Decrees may be received to be entred after eight dayes after the pronouncing of it, that day being excluded.

The Regiſter is to keep copies of the Orders he

doth deliver, and his hand is to be put to the Order before it be entred.

The Regiſter after a hearing, and Reference to a Treaty, is to ſet down in the Order of Reference, what was the Opinion of the court, unleſſe the court do direct it to be drawn otherwiſe.

All Orders drawn up by the Regiſter are to be entred under the Regiſters hand in due time.

The Regiſter is within ten dayes after the end of every Term to certifie the Commiſſioners, what References depend in the hand of any Maſter, and how long they have depended, that ſo if any of them have depended over-long, the court may require an account thereof from the Maſter, and quicken him to a ſpeedy diſpatch.

Touching Suits in Forma Pauperis.

THE counſell and Attorney aſſigned for *Paupers* may not refuſe, but muſt attend their buſineſſe, unleſſe they ſhew cauſe to the court, why they cannot ſo do.

They muſt alwaies have their Order of admiſſion with them, and firſt move that, before any other motion; and it hinders not, but that they may, if they have any other motion, make it afterward.

Where the Regiſter finds that he is not a *Pauper*, he ſhall not draw up any Order upon the ſecond motion; but the *Pauper* ſhall looſe the Fruite of it.

No Counſellour, Attorney, or Officer of the court appointed to be for a *Pauper* by the court, is to take any thing of, or contract for any thing with him, and the *Panper* that can be proved ſo to

have

have given or contracted, is to be dis-paupered for ever.

If a *Pauper* sell, or contract for his Suit, or any part of it, his Bill shall be dismissed, and never after retained.

No processe of contempt shall go out for a *Pauper* untill it be signed by the six Clark, who deale for him, and he must see there be cause for it.

The course to obtaine the Admission is by way of Petition, either to the Commissioners of the great Seal, or to the Master of the Rolls, who underscribe it, the Party having made Oath that he is not worth five Pounds, and assignes him counsell and Attorney.

His Admission must be shewen in the severall Offices, where he hath occasion to passe.

Touching petitions, for the avoiding of the multitude, of idle ones, drawn by persons altogether ignorant of the practice and course of the court, or true state of the Petitioners businesse, it is directed, that Petitions before they be presented to the commissioners of the great Seale, or Master of the Rolls be shewed to that six clark, who is the Petitioners Attorney in court, or to this Deputy, and by him approved and subscribed; and for this no Fee is to be taken; but this not to be understood of Petitions advised, and signed by counsell. Nor of Petitions containing any matter of complaint against the Attorney, or his under clarke.

Touching Affidavits

Affidavits are most generally made before Masters of the chancery, but where itis for the ser-

ving of a *Subpœna*, they are ſometimes taken and certified by others.

An *Affidavit* may not be taken againſt an *Affidavit*, for if it be, the latter is not to be uſed.

An *Affidavit* ought not to be taken tending to the proofe or diſproofe of the matter in queſtion: Nor may any ſuch matter be admitted, to be colourably inſerted into any Oath made of the ſerving of proceſſe: See more to this purpoſe, *Caries* Reports 63. 81. 82. 84. 85. 88. 98. 99. 103.

The way of Proceeding againſt a priviledged Perſon.

A Declaration againſt a priviledged man for Debt, or any thing whereof the Court holdeth Plea, is to be delivered to one of the ſix Clarks, whom the Plaintiff maketh his Attorney, and hee thereupon giveth a day (as it is commonly tearmed) which is a week, (*viz.* the whole next returne) to the Defendant to anſwer, which day is entred in the ſix Clarks coſts Book in this manner, (*Roberts* againſt *Johnſon*) A day is given from the day of Saint *Michael* in one Moneth, in a plea of priviledge.

Day being thus given, the Declaration under the Attorneys hand is ſent over to the Petty-Bag, by one of the ſaid Attorneys Clarks, which Declaration is briefly entred by one of the Clarks there, and likewiſe the day that is given to the Defendant to anſwer in a Roll there, which is called *Rotulum remembrane. Parvæ bagæ*; At which day by the courſe of the common Law, if the Defendant plead not, he is fore judged the court, but the courſe of the Chancery hath been of late to allow the Defendant a day

Cur. Cane.

of Imparlance, that is, day till the next return after the return given him to answer, which is in this manner.

The Defendant retaineth one or other of the six Clarks who imparleth for him, which is done in the six Clarks-costs Book in this manner, (*Roberts* against *Johnson*) Imparlance untill the Morrow of all-Soules, at which day it is sent over to the petty-bag, to be entred into the aforesaid Roll next under the said Declaration.

The said day of imparlance being past, another day, *Videlicet*, commonly five dayes in a week (which is commonly called a peremptory day) is given by the Plaintiffs Attorney and entred in the petty-bag as aforesaid, to the Defendant to plead, or else Iudgment is to be entred against the Defendant.

If the Defendant plead, his Plea is delivered by his Attorney to his Plaintiffs Attorney, and then if the Plaintiff will proceed to a Tryall, he is to joyne up the Issue (if he may, for in some cases he cannot) or else the Plaintiff is to reply, and to give the Defendant a day, *viz.* a whole Terme to joyne up issue which is given and entred as the day to answer: and if the *Defendant* by that day joyns not up the issue, Iudgment is entred up by *Nihill dicit*, and it is to be noted, that after a peremptory day given, the Defendant cannot pray *Oyer* of the Bond and condition, or such like, as of late is used for a meer delay: But if the Issue be joyned up, either by the Plaintiff or Defendant, then is the Record made up, and the same with a *Venire facias* is sent in to the Kings Bench to be tryed, as an action there at Issue, and upon Iudgment there, Execution is thereupon there awarded.

But if the Defendant refuse or neglect to imparle at the day given him to answer or to plead, for hee

may

may plead at that day if he will, then is Judgment entred againſt him, and Execution awarded.

Upon Judgment either by default, or *Nihil dicit*, ſome of theſe Writs of Execution are awarded; if for debt, the Plaintiff may have an *Elegit* by *weſtminſt.* 2. *Chap.* 18. or elſe *Levari facias*, or *Fieri facias*: and if the Plaintiff cannot levy his Debt and Damages, then he ſhall have a *Capias ad ſatisfaciendum*, either for all, or ſo much as reſteth unſatisfied.

The Judgment being ſatisfied, the Plaintiff by himſelfe or his Attorney (if the Defendant do deſire it) doth acknowledge ſatisfaction upon the Judgment in the Petty-Bag Office.

It is to be noted, that whatſoever day is given by any of the ſix Clarks, and by them entred in their Booke, worketh nothing, if the ſame be not entred in the Petty-Bag.

The courſe uſed, where the priviledged perſon ſues.

THE Defendant being arreſted by an Attachment of Priviledge, at the Suit of a priviledged man, muſt retaine one of the ſix clarks to bee his Attorney and muſt put in Baile to the Plaintiffs Action, according to the courſe of the court, which is, to appear from day to day, untill the Plea be determined, to ſatisfie the Plaintiff all ſuch ſummes of Money as the Plaintiff ſhall recover againſt him by reaſon of this Suit: Then the priviledged man putteth in his Declaration, and the proceedings thereupon are the ſame as before, againſt the priviledged man.

By the courſe of the court the Defendant is to put in foure Subſidy men, or ſufficient Sureties (be the

the action never ſo ſmall) as appeares between *Archibald* and *Burall*, 23. *Eliz.* wherein the Defendant is bound in four hundred pounds, the ſum of the action, and every Surety in a hundred pounds.

If Judgment be given for a priviledged man in this Court, he may if he will take out Execution againſt the Defendant as before; but if he will not then he may take out a *Scire facias* againſt the Defendant and his Manucaptors upon the Bail, whereupon if Judgment be had upon the *Scire facias*, in the Chancery, Execution is awarded as in the former Actions: But if upon iſſue joyned, and ſent into the Kings Bench, and upon a tryall there, Judgment be given, then is Execution there awarded; and upon ſatisfaction of the Debt and Damages, the Baile is to be diſcharged, upon the acknowledgment of ſatisfaction, as before.

If either the Plaintiff or Defendant upon a Declaration of Priviledge, or *Scire facias*, Demur in Chancery, the Demurrer being joyned, a day is ſet down by the Lords Commiſſioners for arguing thereof before them; and if upon the Argument it fall out to be a *Reſpondeas ouſter*, then Judgment is entred thereupon, and if it be againſt the Defendant, then Execution is awarded, and if againſt the Plaintiff, then it is, that the Plaintiff ſhall take nothing by his Writ, or by the Declaration.

But if it be a *Reſpondeas ultra*, then is the Defendant to pay coſts, and a day given for him peremptorily to plead, or Judgment to be entred, *Practice of the Chancery*, 93, 94, 95, 96.

A Table

A Table of Fees due unto the six Clarks and other the Officers of the Court.

	l	s	d
FOR all first, second, or other Copies of all Bills, Answers, and other pleadings whatsoever, as also of all certificates and examinations made or taken, by vertue of any Commission but of this court, and of the Interrogatories therewith returned, and also of all Declarations or Proceedings by English Bill, or according to the course of the common Law, and for copies of records, Rolls, or Evidences, brought in to be copied, or remaining in the said court for every Leafe of Paper containing fifteen lines.	0	0	8
For the Inrolling of all Warrants whereby any Patents, commissions, Licenses, Pardons, Leases, or other Grants whatsoever, do passe by and under the great Seale, after the rate of every Skin so passing the great Seale.	0	2	0

For the inrolling of all Warrants for all commissioners for the Peace, for Goale-delivery, for a Liberty for *Oyer* and *Terminer*, for Piracies, for the preservation of the Game of the Swans, and for the commissions for Inquiry sued out for the benefit of any private person, for every of the said commissions 0 1 8

For

For the inrolling of all Warrants for all commissions of appeale, and for the admiralty, for every one of them, 0 4

For the Inrollment of every warrant for every ordinary license, or pardon of Alienation, 3 4

But if it be of more then ordinary length, then according to the length after the rate of 20 s the skin and not above.

For the Inrolling of all warrants for all commissions in the nature of Writs, of *Diem clausit extremum, mandamus, Ideota probanda, Lunaticis inquirend. Melius inquirend.* for every of them, 3-4

For the inrolling of the warrants, for every patent or grant of the costgdy of any Ward, 8-8

For the inrolling of the warrant for every presentation, Donation, or Revocation, to any Rectory, Vicaridge, Deanry, Arch-deaconry, Chancellor-ship Treasurer-ship, or Dignity to any Metropoliticall, Cathedrall or collegiate Church, or for any Cannon ship, or Prebend, in any of the said Churches, or for the Mastership in any Hospitall or other Ecclesiasticall living, or for the grant of any presentation or presentations, *pro unica vel pluribus vicibus* thereunto 3-4

For the inrolling of Warrants for every, *Mandamus ad installand.* 3-4

For the inrolling of all warrants, for all Licenses for wines, for every life 3-4

Or such Fee not exceeding that proportion, as by the Commissioners shall be set down, formerly they paid although granted for three lives 6-8

For the inrolling warrants for every pardon of Outlawry 3 4

For inrolling of the warrants for every Denizarion, or commission of Bankrupts, 3-4

For the writing of every Exemplification, as well of

of Records in the Tower, as of any Record whatsoever, being in their custody, after the rate for every Skin 1 6 8

Of every Client for every Term whilst his cause dependeth undetermined, by decree or bydismission the termly Fee of 0-3-4

If there were twenty Plaintiffs or more in one bill they all pay but one Fee for one Term 0 3-4

But for every three Defendants, accounting the Husband and the Wife but for one person, there is due for their first appearance 0-3-4

And upon the first appearance, if every Defendant appear severally by himselfe, he is to pay the Fee of three shillings four pence, but every Term afterwards during the continuance of the cause, there is only the Fee of three shillings four pence the Term to be paid for all the Defendants that appeared in any Term or vacation, in the same cause.

For a *Subpœna* Writ to answer 0-2 6

If there be three in the Writ, you pay more, 0-0 6

For the Attachment 0-2 10

For breaking it up with the Sheriff 0-2-0

For returne of the Attachment 0-0 4

For the proclamation upon the same 0-2-10

For the returne of the proclamation 0-0 4

For the Commission of rebellion 0-18-2

For the Inrollment of every *liberate* and *Allocate* 0-3-4

The rule which the Plaintiff gives the Defendant to make answer by a certaine day, in case where the Defendant appeares 0-0 4

For each rule of publication, after Examination of Witnesses 4d

For entring them with the Register, for each 0-0 4 *d*

The

The Defendants appearance 0-4-0
In which is included the Attornies fee for the Term.
For the oath made that the anſwer is true, 0-0 4
The like for every Defendant 0 0 4
For the commiſſion to take the anſwer in the Country, by *Dedimus poteſtatem* 0 7-10
Beſides the ingroſſing of the Bill, which is included in it, every ſheet 0-0-6
For the *Subpæna* for coſts where the Bill is not put in by the Complainant within the time limited 2 6
For a Bill of coſts and the entry of it 2-4
A joynt commiſſion to examine witneſſes in the countrey. 7-10
So much the Plaintiff payes the Defendant 6-8
For the Examination of the firſt witneſſe here before examiners, 0 2-6
For every witneſſe afterwards 0-2-6
For the copies of the depoſitions of any witneſſes returned by commiſſion 0 0 8
For every ſheet,
For copies of Depoſitions taken in the Examiners Office, for each Sheet 0-1-0
For the drawing of the Order upon motion, for every ſide, 0-1-6
For the entring of the Order, every ſide 0-0-6
The Fees of an injunction in all 1-2-6
For a *Subpæna* to rejoyn 0-2-6
For a *Subpæna* to hear Iudgment 0-2-6
For a *Subpæna ſuper ordinem* to ſhew cauſe, 0-7-2
For a *Subpæna duces tecum* 0-7-2
For a *Subpæna de executione ordinis* 1-0-0
For the Rolls to publiſh witneſſes, for each 0-0-4
For entring them with the Regiſter, for each 4
For the copy of Replication, Rejoynder, Surrejoynder

re-joynder, Rebutter, and Sur-rebutter, as for Bill and answer.

Fees for a Decree for drawing up, as in case of an Order.

For every writ of Execution upon any order, 68

For drawing and inrolling every decree and dismission respectively 034

For every writ of Execution upon any decree after the rate for every skin 168

For the writing of every Sheriffs patent, writ of Assistance, writ of discharge, commission to take the Sheriffs oathes, the warrant of Attorney, and the writing of the two oathes, and the Attorneys Fee; 128

For every *Supersedeas* for the discharge of any Commission or other writ made in the six Clarks Office 068

For every *Supersedeas* of priviledge 068

For every speciall *Certiorarie*, or *Procedendo Corpus Cum causa*: or *Habeas corpus* 068

For every bail upon every writ of *Corpus cum causa*, or nature of priviledge 029

For all manner of *Certioraries*, and *Procedendoes* of course. 020

For every recognizance or bond made to the Court, 020

FINIS.

An Abſtract of the late Ordinance for the regulating of the Chancery, and the Fees now to be taken.

FOr the better regulating and limiting the juriſdiction of the high Court of Chancery, it is hereby ordained by his Highneſs the Lord Protector, by and with the conſent of his Council.

1. That from and after the two and twentieth day of *October*, 1654. there ſhall be a certain number of Atturneys in Chancery, not exceeding 60, who ſhall be nominated by the Maſter of the Rolls, out of ſuch of the preſent Clerks in the ſix Clerks Office of the Chancery, or others, as ſhall be of ability and honeſty, (and from time to time in caſe of death, or removal, to be ſupplied by his nomination) who being approved by the Lords Commiſſioners, ſhall be by them ſworn Attorneys in the ſaid Court, and ſhal receive thethree ſhillings four pence, termly Fee, which formerly the ſix Clerks received, and ſhall ſolicite and manage each Clients cauſe, without receiving any more for their pains of ſolicitation, than the ſaid Fee of three ſhillings four pence.

2. That from and after the time aforeſaid, inſtead of the ſix Clerks in Chancery, there ſhall be three chief Clerks, and no more. And that *Laurence Maidwell*, *Matthew Pindar*, and *Robert Haler*, Eſquires, ſhall be and are hereby made and conſtituted the firſt three chief Clerks; and that in caſe of death, or removal of any of them, the ſaid chief Clerks ſhall be nominated from time to time by the Maſter of the Rolls, and approved by the Lord Chancellour, Lord Keeper, or Lords Commiſſioners for the time being; and that the perſons before named to be the preſent chief Clerks, and ſuch

as ſhall hereafter be named and approved as aforeſaid being admitted in ſuch manner as the ſix Clerks formerly uſed to have been, ſhall do, execute and perform all and every matter and thing which the ſix Clerks heretofore might and ought to have done, except intermeddling in any cauſe as Attorneys; and that from and after the time aforeſaid, no other perſon or perſons ſhall uſe or exerciſe the Office of a ſix Clerk in Chancery; and that the Maſter of the Rolls do take care, that all the Pleadings, Papers, Books, Proceedings, and all other things belonging to or filed in the ſeveral Offices of the ſix Clerks be diſpoſed of and filed in three Offices there, and that the Attorneys aforeſaid ſhall be diſtributed equally into the ſaid three Offices.

3. That all Bills, Anſwers, Pleadings, *&c.* ſhall be filed with the chief Clerk in whoſe Office the Atturney towards the cauſe for the Plaintiff is. And that each of the chief Clerks ſhall have an inſpection into the demeanour of the Atturneys in his Office, that they do their duties, both to the Court and to the Client. And where they ſhall finde any abuſe, miſdemeanour or unfaithfulneſs in any of them, ſuch chief Clerk ſhall acquaint the Court therewith, who ſhall examine the ſame, and give reparation to the party wronged, and if they ſee cauſe diſcharge ſuch Atturney from his place.

4. That the firſt Proceſs in Chancery be a *Sub pœna*, which ſhall be open, and as many Defendants as the Plaintiff ſhall deſire be inſerted into the ſame, paying no more than one ſhilling and ſix pence for every *Sub pœna* to be thus diſtributed, ſix pence for the Seal, and twelve pence to the Officer.

5. That no *Sub pœna*, ſhall be ſued out, untill a Bill be filed, and a Certificate thereof brought unto the *Sub pœna* Office, under the hand of the chief Clerk

Clerk or his Deputy, for which Certificate the ſaid chief Clerk ſhall receive no Fee.

6. That in default of Appearance, upon Oath made of due ſervice, or in default of an Anſwer within the due time (ſecurity being put in as is hereafter provided) an Attachment with Proclamation ſhall iſſue to the Sheriff, who ſhall cauſe the ſame to be proclaimed at the Door of the Defendants dwelling Houſe, Lodging, or laſt Abode, between the hours of ten in the forenoon, and two in the afternoon, by Bailiffs to be nominated by the Sheriff, or by ſpecial Bailiffs, (which ſhall not be denied, if required) and the ſaid Bailiffs ſhall have power for the apprehenſion of the party (if need ſhall be) to break open any Houſe or Door where the party is in the day time. Provided, that if the Warrant be to ſpecial Bailiffs, they ſhall not break open any Houſe or Door, but in the preſence of a Conſtable, who upon the ſhewing of ſuch Warrant is hereby required to be aſſiſting unto the ſaid Bailiffs therein. And if the Defendant cannot be apprehended, nor ſhall appear by the Return of the Writ, the Plaintiff may renew the Attachment as often as there ſhall be cauſe, which Attachment ſhall be in lieu of a Commiſſion of Rebellion, and Serjeant at Arms.

7. The Defendant ſhal not be compelled to anſwer untill the Plantiff, with one Surety at leaſt, hath aeknowledged a Recognizance before a Maſter of the Chancery in ordinary or extraordinary (the ſum not to be under 20 Marks) conditioned to pay ſuch coſts to the Defendant in that ſuit, as the court of chancery ſhal award if they ſee cauſe to award any, for which Recognizance there ſhall be paid twelve pence only, and no more, and ſuch Maſter of the Chancery ſhall forthwith certifie every ſuch Recognizance into the Office of the Petty Bag in Chancery, to be there

filed, and the Officer there shall give a Certificate thereof to the Plaintiff, or his Atturney, upon requeſt; and for the filing ſuch Recognizance, making ſuch certificate, and keeping an Alphabet thereof, he shall have and receive twelve pence, and no more; but where the Plaintiff ſhall he admitted *in forma pauperis*, no ſuch ſecurity is to be required.

8. That where a Defendant might anſwer by Commiſſion in the countrey, he ſhall not now be inforced to take a Commiſſion, but without taking any Commiſſion may anſwer upon Oath before a Maſter of the Chancery in the countrey in like manner, and by ſuch time as if a Commiſſion had iſſued. And that the Lords Commiſſioners for the great Seal do take care, that for that purpoſe, there be in every County a convenient number of ſuch of the Juſtices of the Peace reſident in that County, as they ſhall judg to be of the greateſt ability and integrity, appointed to be Maſters of the Chancery extraordinary; and that any ſuch Maſter, or any Maſter in ordinary, after the Anſwer ſo ſworn before him, ſhall ſign the ſame, and give it into Court himſelf, or otherwiſe being ſealed up, deliver it to ſome perſon to deliver the ſame into Court, and to make Oath that he did receive the ſame from the hand of ſuch Maſter of the Chancery, and that ſince the receiving thereof the ſame hath not been opened or altered.

9. That upon delivering in the Anſwer, the Atturney for the Defendant do take care that he be provided with names of Perſons for Commiſſioners, to be given by him upon a Rule given to rejoyn.

10. When an Anſwer is put in, the Plaintiff ſhal reply within eight days, if the anſwer come inin Term-time, otherwiſe within four days aftes the begining

gining of the next Term, unleſs the Plaintiff ſhall within eight days after the Anſwer come in, put in Exceptions thereunto, or procure the cauſe to be ſet down for Hearing on Bill and Anſwer, to be heard the next Term; otherwiſe the cauſe to be diſmiſſed without motion, with coſts to be taxed by the chief Clerks.

11. That no copies ſhall be given out of any Bill, Anſwer, or their Pleadings, untill the ſame ſhall be filed with the chief Clerks; and that each of the ſaid chief Clerk, where ſuch Pleadings ſhall be filed, ſhall by himſelf, and ſuch Clerk as he ſhall appoint, for whom he is to anſwer, upon delivery out of ſuch Pleading to be copied, take the name of the Atturney, to whom it is delivered, ſubſcribed in a Book to be kept for that purpoſe; and if any Atturney, to whom any Pleading is delivered to be filed, ſhall neglect to file the ſame, or after filing, if the Atturney to whom any Pleading is delivered to be copied, ſhall neglect to bring back the ſame in due time, if the ſame be through negligence, and not voluntary, he ſhall make ſatisfaction to the party damnified thereby, as the chief Clerks for the time being, upon Examination thereof, ſhall award; but if upon ſuch Examination it ſhall be found that the ſame was done voluntarily, he ſhall not onely make ſatisfaction as aforeſaid, but ſhall be expelled the Court.

12. That in caſe the Plaintiff think fit to except to the Anſwer for inſufficiency, the Plaintiff ſhall deliver the Exceptions in writing to the Defendants Atturney within eight days after the Anſwer filed, and ſhall enter the cauſe with the Regiſter, and in the ſame order as they are entred, the ſame ſhall be heard by the Maſter of the Rolls, who ſhall appoint one or more days in every week for that purpoſe,

and at every ſitting ſhall appoint his next day of ſitting, and how many of the ſaid cauſes ſhall be then heard upon Exceptions, in the ſame order as they are entred, on which days the parties ſhall attend at their peril, and the Maſter of the Rolls upon hearing thereof ſhall give ſuch coſts as ſhall be fitting.

13. If a Defendant doth appear and anſwer inſufficiently, and it be ſo ruled; or ſhall plead and demur, and the ſame be over-ruled, then if upon a Rule given he ſhall not anſwer within eight days, the Plaintiff may proceed in ſuch ſort as is before directed in caſe the Defendant had not appeared.

14. That after an Anſwer, if it ſhall appear at any time unto the Court, that no part of the matter of the Plaintiffs Bill is then proper for relief in that Court, the Court ſhall diſmiſs the Bill with full coſts, upon a Bill to be allowed by the chief Clerks; but if ſome particular part of the Bill be thought fit by the Court to be proceeded in, the Court then ſhall direct the Examination and Proceedings upon that particular point, and the Defendant not be inforced to proceed to Examination upon any other matter.

15. The Plaintiff the next day after the Replication filed, or the ſame day if he will, ſhall cauſe a Rule to be entred for the Defendant to rejoyn and joyn in Commiſſion; which if the Defendant ſhall not do within eight days, then the Plaintiff may take a Commiſſion *ex parte*, and the Defendant ſhall have no new Commiſſion in that cauſe.

16. That no Witneſs ſhall be examined in Court, but by one of the Examiners themſelves, unleſs in caſe of ſickneſs, and that one of the Examiners ſhall examine the Witneſſes of the Plaintiffs part, and the other the Witneſſes of the Defendants part,

part, if any be produced to be examined in Court, and that no Clerk in that Office shall be a Solicitor upon pain of losing his Place.

17. That all Commissions for Examination of Witnesses shall be open.

18. That a Commission to examine Witnesses may be issued out to be executed at any place, as well within ten miles of the City of *London*, as beyond it, if the party please.

19. That Commissioners for Examination of Witnesses shall take an Oath before execution of any Commission to execute the same faithfully, and impartially, which each Commissioner is impowred to administer to the other; and the Clerk or Clerks attending such Commissioners shall take an Oath, which is to be administred by the Commissioners, to write down the Depositions of the Witnesses truly and indifferently without partiality; and a clause shall be inserted into the Commission for that purpose.

20. That the Plaintiff having the carriage of the Commission, shall at his peril appoint a day and place for execution thereof at least eight days before the return of the Commission, and give due notice thereof, (unless in case where the day and place shall be agreed by the Attorneys on both sides, before the Commission go forth) and shall at the day and place appointed produce the Commission, and deliver the same to the Commissioners then present, to the end they may execute the same; or in default thereof the Plaintiff shall be absolutely concluded from having any other Commission, or examining any more Witnesses in that cause; but in such case the Defendant shall be at liberty to take out the then next Term, one Commission (or more) into several Counties (if he see cause) wherein the Plain-

tiff may joyn, but shall not examine. Nevertheless to prevent delay, the Defendant if he please may take out a Duplicate, when any Commission is sued out to examine any Witnesses; and the Plaintiff shall not give due notice to execute his Commission, eight days before the return of the Commission, the Defendant may execute his Duplicate at any time before the return, giving notice of the time and place where he intends to execute the same, one day at least before the execution thereof.

21. That there shall be no more than two Commissions at the most, for Examination of Witnesses in any one cause to be executed in *England* or *Wales*, unless where one shall be suppressed; and in case either party have any Witnesses in *Scotland*, or beyond the Seas to examine, setting down the names of such Witnesses, and delivering them to the Attorney of the other side, he may take out a Commission within the time before limited, wherein the adverse party may joyn, if he will, within four days after notice; otherwise the Commission shall issue *ex parte*. Provided, that the parties, or either of them, (if the Court see cause) may have several Commissions into several Counties of the same date.

22. That after the execution of one Commission, no second Commission shall be taken out, but by order of the Court, and upon *Affidavit* that some material Witnesses, whose names shall be therein expressed, have been discovered since the execution of the former Commission; or that some of the Witnesses intended to be examined at that Commission, and which are material, could not be found; or by reason of sickness, or like just cause, could not attend that Commission; in which case onely those Witnesses which shall be named, shall be examined by such second Commission; and the same

ſame ſhall iſſue, and be executed at the charge of the party praying the ſame, unleſs the other ſide ſhall alſo deſire to examine any Witneſſes by any ſuch ſecond Commiſsion; and then he ſhall likewiſe ſet down their names.

23. That after the return of a Commiſsion executed, or Witneſſes examined in Court, there ſhall be but one Rule for Publication; within which time, if the other ſide do not ſhew unto the Court good cauſe to the contrary, Publication ſhall paſs accordingly.

24. That from and after the 22. day of *October*, 1654. no Order or Direction concerning any cauſe depending in Chancery be made or given, but upon motion in open Court; that then both parties concerned, or their Council, may be heard.

25. That the chief Clerks, and likewiſe the Attorneys, do diligently attend in Court, and do give an account touching any Proceedings in any cauſe depending in Court, as they ſhall be required.

26. That the chief Clerks ſhall have and receive one moyety of the Fees for copying, and for all other matters and things contained in the Table hereunto annexed, ſuch and ſo much of the Fees therein ſet down, proportionably (with reſpect to the ſame, as they are by the ſaid Table reduced) as the ſix Clerks formerly did and might receive.

27. That no Injunction be granted, but upon motion in open Court, ſatisfying the Court with ſuch matter, which may induce the Court in Juſtice to grant the Injunction; but the Defendants taking Commiſsion, or ſitting an Attachment onely, ſhall not be a ſufficient ground for an Injunction.

28. That no Injunction be granted before the hearing of the cauſe, to ſtay a Suit at Law, but upon matter confeſſed in the Defendants Anſwer, matter

ter of Record, or in writing under Hand and Seal produced in Court.

29. That no Injunction granted after a Plea pleaded at Law, or Rules given, shall ſtop a Trial at Law, or any Pleadings or Proceedings preparatory to a Trial.

30 That from and after the 22. of *October*, 1654. no Injunction be granted to ſtay the Morgagee from his Suit at Law, till the final hearing of the cauſe; but an Injunction may be granted to prevent the Morgagees pulling down Houſes, cutting Trees, or making other waſte and ſpoil upon the morgaged Land.

31. That all differences touching irregularities in Proceedings, or upon the Rules or courſe of the Court, ſhall be determined by the chief Clerks, or any two of them, whom the Attorneys on both ſides are to attend; and in caſe either ſide ſhall not reſt ſatisfied with their judgment therein, they may appeal to the Maſter of the Rolls, who upon hearing the Attorneys on both ſides (and the chief Clerks who made the Certificate) if he ſee cauſe, ſhall ſettle the ſame, and give coſts where he ſhall find the fault.

32. All other References ſhall be determined by the Maſters of the Chancery, or Ordinary, which ſhall be onely ſix in number, to be now, and from time to time appointed by the Lord Protector for the time being of which ſix, three ſhall ſit daily at ſome certain publick place, ſo long as any ſuch References depend; and ſhall have a ſworn Regiſter to attend them, who ſhall in preſence of them and the Council, reade the Notes taken in each cauſe upon any Order made, or Report agreed; and the ſame being ſo read, ſhall be ſubſcribed by the Maſters then preſent, or any two of them; and afterwards

wards the Report ſhall be drawn up by the ſaid Regiſter, and ſubſcribed by the ſame Maſters, and certified: And that from and after the two and twentieth day of *October*, one thouſand ſix hundred fifty four, no other perſon or perſons ſhall exerciſe the Office of a Maſter of the Chancery in ordinary.

33. That for every ſuch Report, the party deſiring the ſame, ſhall pay unto the ſaid Regiſter twelve pence for each ſide of the Report; and ten ſhillings upon every ſuch Report to be diſtributed amongſt the three Maſters, before whom ſuch cauſe was heard, for which the ſaid Regiſter is to account unto them.

34. For every Order which the ſaid Maſters ſhall make for new appointments or ſummons or of the like natutre, the ſaid Regiſter ſhall have onely twelve pence and no more.

35. That all References made by the Court to the Maſters, ſhall be ſet down by the Regiſter, who draws ſuch order in a Book, for publique view, and ſhall be heard in their order, as they are ſo referred and ſet down, without alteration; provided there ſhall onely eight be put in the paper to be heard at one time; and both parties are at their peril to attend the ſame at the time, or in default thereof, the cauſe to be proceeded in as if they were preſent.

36. If any Councell ſhall miſ-inform the Court of any matter contained in the pleadings, proofs, or evidence, whereof he may have the peruſall, or of any other matter whereof his Client did not inform him, and thereupon obtain an Order, which the Court ſhall afterwards ſee cauſe to diſcharge; the Counſell ſo miſ-informing, ſhall be reprehended openly in Court; and before he ſhall be heard any more in Court, ſhall pay forty ſhillings to the party wronged by ſuch miſ-information, and twenty ſhillings to the uſe of the Lord Protector. But

37. But if ſuch information be of matter of fact, whereof the Counſell cannot be otherwiſe certified, then by the information from his Client, Attorney, or Sollicitor, who gave ſuch information, ſhall pay forty ſhillings unto the party wronged, and ſhall ſtand committed by order of the Court, till he pay the ſame.

38. That from and after the ſaid two and twentieth day of *October*, one thouſand ſix hundred fifty and four, every Attorney ſhall keep all and every *Affidavits*, whereupon he ſhall make forth any Writ or Proceſs, in his own cuſtody; and ſhall ſhew the ſame to the Attorney of the other ſide, and ſuffer him or any other perſon to take a copy thereof, if he ſhall require it: And that the Senior Regiſter ſhall appoint a Clerk of honeſty and integrity, to attend in Court, and at the Rolls, and at Seals, who ſhall take an Oath before the Lord Chancellor, Keeper, or Commiſſioners for the great Seal, to be faithfull in this imployment; and ſhall receive into his cuſtody all and every *Affidavit* which ſhall be read in Court, or upon which any order ſhall be grounded, and ſhal duly file the ſame, and keep an Alphabet thereof. And in caſe the party, at whoſe inſtance ſuch *Affidavit* was made, ſhall have cauſe to have a copy thereof, he ſhall pay unto the ſaid Clerk for the ſame, four pence for the filing, and three pence for every ſide for a copy thereof; and the other ſide, or any other perſon deſiring it, may alſo have a copy at the ſame rate; and the Regiſter ſhall have for examining and ſigning ſuch copy, ſix pence and no more.

39. That the former rules of the Court for admiſſion of *Paupers*, be duly obſerved; and in ſuch caſes where by the Rules aforeſaid, coſts are to be paid, in caſe the party who ought to pay the ſame

be

be a *Pauper*, the Court ſhall give order, that unleſs the coſts be paid, ſuch perſon be whipped or ſent to the houſe of Correction.

40. That all cauſes ſhall be ſet down for hearing, in order as they were publiſhed, without preferring one cauſe before another, and ſhall be ſo preſented by the chief Clerks, without taking any Fee for the ſame; and the cauſes being ſo ſet down, ſhall be heard in the ſame order.

41. And that every cauſe ſhall be heard the ſame day on which it is ſet down for hearing; and for that purpoſe, the Lords Commiſſioners, if there be cauſe, ſhall ſit for hearing ſuch cauſes in the afternoon as well as the forenoon, except upon Saturdaies.

42. That from and after the five and twentieth day of *March* one thouſand ſix hundred fifty and five all cauſes ſhall be heard the next Term after publication; or if they be more in number than may probably be heard that Term, they ſhall be ſet down on certaine dayes next after the Term, and attended and be heard upon thoſe daies, as if they had been ſet down for that Term; and that *Subpœna's* to hear Judgment ſhall be made returnable upon ſuch reſpective daies accordingly.

43. That no relief ſhall be given in Chancery againſt a Bond (which is only for payment of money) to be entred into from and after the five and twentieth day of *March*, one thouſand ſix hundred fifty five.

44. That no truſt or agreement made or declared after the five and twentieth day of *March* one thouſand ſix hundred fifty and five, concerning Lands, or any other thing in the realty, ſhall be relieved in Chancery, unleſſe it be contained in writing, and ſo averred in the Bill, ſave in ſuch caſes where the poſſeſſion hath gone along with the party claiming the truſt.

45. That

45. That no Bill shall be admitted, nor any relief given in Chancery upon averment of any intention of the parties to a Deed to be made from and after the five and twentieth day of *March* one thousand six hundred fifty and five, other than what doth appear by the Deed it self.

46. That the Chancery shall not give relief in any case where the Plaintiff can have relief at Law, unless it be for the performance of the thing in kind where it cannot be had at Law.

47. That no Decree shall be made in Chancery, against an Act of Parliament.

48. That from and after the five and twentieth day of *March* one thousand six hundred fifty and five, Legacies shall be sued for at common Law, and not in Chancery.

49. That from and after the said five and twentieth day of *March* one thousand six hundred fifty and five, no relief shall be given in Chancery, on a Mortgage after three years forfeiture, or unless the suit be commenced within one year after the entry and possession of the Mortgagee continued, except upon some new agreement between the parties themselves in writing, and except in cases of Infancy, Coverture, *non sane memoria*, or beyond Seas. In which cases the persons concerned shall commence their suits within two years after the dis-ability removed, or in default thereof shall be debarred from any relief afterwards; and in case of such new agreement, the like rule to be observed after the time, by such new agreement limited, shall be expired.

50. That in case of Mortgages to be made from and after the five and twentieth day of *March* aforesaid, where the Mortgagee is in possession by recovery at Law, or otherwise, he shall not (except by speciall agreement in writing) be put to accompt for

the

the yearly profits accrued after ſuch his entry before the ſuit for redemption be commenced, but the ſame ſhall belong to, and be retained by him without accompt, if by his anſwer, or at the hearing he ſhall elect to take the ſame in ſatisfaction of the Intereſt of his money, whiles he had the poſſeſſion, except the Mortgagor ſhall rather elect to be concluded by the Mortgagees examinations upon Interrogatories concerning the profits by him received.

51. That ſuch Mortgagee before the Mortgagor be admitted to redeem, ſhall be paid his whole principall money with damages, and his full coſts incurred before his entry, and alſo after the ſuit commenced, to be taxed by the chief Clerks upon a Bill of coſts, wherein and in all other caſes of Mortgages to be made from and after the time aforeſaid, the Mortgagee ſhall be charged (in caſe the Lands be letten to Tenants) with no more than what he did, or might fairely have received without fraud, or his own willfull default; And where the Lands are unletten, and kept in his own hands, with no more than four fift parts of the true yearly value. But if after ſuch entry any caſuall profits by fines upon copy-holds, wood-ſales, or otherwiſe ſhall be received by the Mortgagee above the yearly revenue of the Lands Mortgaged, then the ſame ſhall go in abatement of Principall and Intereſt due before ſuch entry. Provided that where in the caſes aforeſaid an account ſhall be, all lawfull Taxes and neceſſary diſburſements and allowance ſhall be allowed to the Mortgagee.

52. That where upon a Bill exhibited by a Mortgagee, to inforce redemption or to have the Eſtate abſolute, a Decree paſſeth, and is ſigned and enrolled, the time thereby limited for the payment of the Mortgage-money with damages, ſhall not be enlarged without conſent of parties in writing. That

53. That where Lands shall at any time from and after the five and twentieth day of *March* aforesaid, be extended upon any Statute, Recognizance, or Judgment, and an account sought to be had in Chancery; the Tenant by extent or elegit, shall not be put to account for more then the extended value, unless the Suit in Chancery be commenced within one year after such extent shall be executed, and possession delivered, and enjoyment thereupon accordingly; and that the same Suit be effectually prosecuted, except in case of Infancy, Coverture, *non sane memorie*, or being beyond the Seas: In which Cases, one year and no more shall be allowed to demand an account in Chancery, after such disability removed.

54. That the Office of Register in Chancery shall not henceforth be executed by Deputies, but that there shall be four Registers of the said Court.

55. That the senior of them shall from time to time be Master of the said Office, and shall have the care, custody and government of the said Office, and of all the Books of Entries, Reports, Certificates, *Affidavits*, and other matters filed there, and also of the Clerks in the said Office; and shall take care that the business in that Office be done with faithfullnesse and diligence; and that no Fees be taken or required, other then what is contained in the Table hereunto annexed.

56. That in case of death, or removall of the said senior Register, the next in seniority shall succeed in his room; and as often as any Registers place shal be voyd, the senior Register for the time being, shal make choice of the most able & honest of the Clerks in that Office to that place, who being presented to the Lord Chancellor, Lord Keeper, or Lords Commissioners for the great Seal for the time being, and by

by him or them approved, shall be ſworn and admitted.

57. That each of the ſaid Regiſters ſhall have and retaine to his own uſe, the Fees mentioned in the Table annexed, which ſhall be due for any the matters by him done, bearing his own charge, and his proportion of the Rent of the ſaid Office.

58. That the Lord Chancellor, Lord Keeper, or Lords Commiſſioners for the great Seal, ſhall upon complaint to them made concerning any abuſe, miſdemenors, or unfaithfullneſs in any of the ſaid Regiſters or their Clerks reſpectively, have power to hear and examine the ſame, and to order reparation to the party wronged, and alſo to diſcharge ſuch Regiſter or Clerk from his place if they find juſt cauſe.

59. That the Judgment pronounced upon every hearing, and the rule given on every motion, ſhall be truly taken, and fairly written by the Regiſter and openly read before another cauſe or motion be begun; to the end if the ſame be miſtaken, it may be rectified by the Court, and that it be left to the Regiſter afterwards onely to add the inducement, or reaſon of ſuch Judgment or Order and other formalities requiſite.

60. Where any Bill ſhall be diſmiſſed by the rules of the Court, or order before hearing, the Defendant ſhall have his full coſts, upon a Bill of coſts to be allowed by the chief Clerks.

61. Every Plaintiff who ſhall not in all or ſome of the matters complained of, be relieved by the Court upon the hearing, ſhall pay the Defendant his full coſts upon a Bill of coſts to be allowed by the chief Clerks, or any two of them; and in caſe the Court upon the hearing ſhall find the ſuit to have been vexatious; the court ſhall give additional coſts againſt the Plaintiff, to be pronounced by the Court

at the hearing, beſides the ſaid coſts to be taxed upon the Bill.

62. Every Defendant againſt whom a Decree is made, ſhall pay the Plaintiff his full coſts to be allowed as aforeſaid, unleſs the court ſhall at the ſaid hearing ſee cauſe to mitigate or diſcharge the ſame upon ſome ſpeciall reaſon to be expreſſed in the order.

63. If any find him or themſelves aggrieved by any Decree which ſhall be made in Chancery from and after the two and twentieth day of *October* one thouſand ſix hundred fifty four, then the party or parties ſo aggrieved, firſt performing the Decree in all points (except in doing ſuch Act which extinguiſheth the parties right at the common Law, as making of an aſſurance, releaſe, acknowledging ſatisfaction, cancelling bonds or evidences, or the like) and depoſiting the ſum of fifty pounds in the hands of the ſenior Regiſter for the time being, to anſwer full coſts and charges in travell, attendance and otherwiſe, to the adverſe party, in caſe ſuch perſon be not relieved upon a petition to be exhibited in that behalf to the Lord Chancellor, Lord Keeper, or Lords Commiſſioners for the great Seal for the time being, within 3 moneths after the Decree made, having firſt performed ſo much of the Decree as within that time is to be performed, ſhall have the cauſe re-heard upon the proofs and evidence given at the former hearing, and no other; and that upon the preferring of ſuch petition in open Court, the Lord Chancellor, Lord Keeper, or Lords Commiſſioners, being firſt ſatisfyed that the Decree is performed as aforeſaid, and the fifty pounds depoſited, ſhall the next day after, under their or two of their hands ſubſcribed to the ſaid petition; ſignifie their allowance of a re-hearing of ſuch cauſe, and ſhall ſend notice thereof together with

with the ſaid petition to the Courts of the Upper Bench, Common pleas and Court of Exchequer; whereupon the ſaid Courts ſhall appoint ſix of the Judges, that is to ſay, two of each Court (of which ſix Judges the chief Juſtice of one of the Benches, or chief Baron of the Court of Exchequer ſhall be one) and ſhall ſignifie the ſame to the Lord Chancellour, Lord Keeper, or Lords Commiſſioners, who together with the ſaid Judges, ſhall appoint a day for ſuch re-hearing, at which time the ſaid ſix Judges or the major number of them ſhall be preſent. And the ſaid Lord Chancellor, Lord Keeper or Lords Commiſſioners, together with the ſaid Judges, or the major number of them, ſhall re-hear the ſaid cauſe upon the proofs and evidence read and given at the ſaid former hearing, and no other, and ſhall have power to make void, alter or confirm the order or Decree made upon the former hearing, as they or the major part of them ſhall think fit. And ſuch Order as ſhall be ſo by them made, ſhall be finall in the ſaid cauſe, and in caſe they ſhall not ſee cauſe to alter the order or decree made upon the former hearing, then they ſhall order to the adverſe party his full coſts, upon a bill thereof to be made and allowed by the chief Clerks, together with ſuch addition of coſts for his cauſleſs vexation, as they ſhall think fit. Provided, that if the Decree be for payment of money, the payment of the money into the Court, ſhall be accounted a performance of the Decree, ſo far as to enable the party to haxe a re-hearing as aforeſaid.

64. That no Defendant who is proſecuted by an Officer, Clerk or Miniſter of the Court of Chancery, ſhall be inforced either to appear in perſon in the petty-bag Office, or to put in any other Bayl then he ſhould doe if he were ſued in another Court, at common Law, by a party not Priviledged.

65. That the Maſter of the Rolls, and Maſters of the Chancery reſpectively ſhall not demand, take or receive

any other Fees than what are contained in the Table annexed, and that every offence in that behalf shall be and is hereby adjudged and declared to be extortion, and shall be punished as extortion.

66. That no Regiſter, chief Clerk, Examiner, Attorney of the ſaid Court, or Officer for making *Sub-pœna's*, ſhall either directly or indirectly demand, take or receive any other Fees, or ſum of money, than what is contained in the Table annexed, for or in reſpect of any cauſe depending in the Court of Chancery, Writs, or Proceedings therein, Copies of Record or other thing there filed, regiſtred or put to the Seal; and that every ſuch offence ſhall be and is hereby ordained, adjudged and declared, and ſhall be reputed and taken to be extortion, and ſhall be punished as extortion; and that every perſon and perſons ſo offending and thereof convicted, ſhall be and is, and are hereby diſabled to bear any Office of truſt or profit in the common-wealth.

67. That neither the Lord Chancellor, Lord Keeper, Lords Commiſſioners of the great Seal, Maſter of the Rolls, nor any Officer of the ſaid Court ſhall either directly, or in-directly take or receive any ſum or ſums of money, gratuity or reward, for nominating or admitting of any perſon or perſons to any Office or place within his or their diſpoſition in the ſaid Court, upon pain of loſing his Office, and paying double the ſum or value of the gratuity or reward ſo received; the one moyety thereof to the uſe of his Highneſſe the Lord Protector, and the other moyety to the uſe of the party who ſhall ſue for the ſame, by bill, plaint or information in any Court of Record.

And laſtly, it is ordained by the Authority aforeſaid, that the Chancellour, Keeper or Commiſſioners of the great Seal for the time being, ſhall, according to the times, and in the manner by this Ordinance preſcribed, put in execution all the Rules, Lawes, Orders and Directions

rections before mentioned, and take care with all diligence and circumspection, that all the Officers, Ministers, Clerks and Servants belonging to the said Court, do honestly and faithfully perform the duty of their severall and respective places; and if they be found any wayes faulty, that they be publiquely rebuked, displaced, or otherwise punished according to their desert, that for the future there be no more cause of just complaints from the people.

Fees to the Master of the Rolls. l. s. d.

For every single perpetuity,		00	02 00
For every double perpetuity,		00	02 00
For every grant for life, except wine licenses		00	02 00
For every grant of any Office		00	02 00
For every license for selling Wines		00	01 00
For every Sheriffs patent		00	02 00
For the Dedimus potestatem to take the Sheriffs Oath		00	06 08
For every Exemplifi.		00	06 08
For every cancellation		00	06 08
For every decree and Dismission		00	06 08
For the inrolling of every deed and recognizance		00	02 00
For every Venire fac, ad triand &c		00	06 08
For every writ of Extent		00	06 08
For every Liberate upon an Extent		00	13 04

Fees to the Masters of the Chancery. l. s. d.

For alowance for robes out of the Hannaper		06	14 00
For Oathes upon Affidavits, Answers, and to witnesses to be examined in Court for every Oath		0	00 04
For acknowledgment of deeds and recognizance		00	02 00
For Oathes taken to articles for granting of Supplicavits		00	02 04

For examining all Records which are to be exemplified, for every skin of parchment	00 02 0
For every cause upon a Reference to the three Masters, who shall hear the same	00 01 00

Subpœna Office. l, s. d.

For every Subpœna, of what nature soever and Labells thereof	00 10 00
For renewing the same	00 00 06
For the Seal to each Subpœna	00 00 06
To every counsell under a degree of a Serjeant for a motion	00 01 00
To every counsell on a hearing	01 00 00
To Counsell for the Lord Protector and Serjeants at Law, for a motion	01 00 00
And for every hearing	02 00 00

Cheif Clarks and Attorneys. l. s. d.

For every cause to the Attorney, the Termly Fee of	00 03 04
For an Attachment besides six pence for the Seal	00 01 02
For copying of all bills, pleadings, depositions, Records, Rolls, evidences, remaining in that Court, Certificates, &c. For every Sheet containing fifteen lines, and every line ten words	00 00 04
For every Commission to examine witnesses	00 00 04
For every joyning in such Commission	00 03 04
For every injunction	00 06 08
For signing by the Lords Commissioners	00 02 00
For signing by the Master of the Rolls	00 01 00
For a Distringas	00 03 04
For every speciall certiorari or Procedendo	00 03 04
For every Habeas corpus	00 03 04
For every Supersedeas	00 03 04
For every speciall Commission	00 05 00

For

For every writ of execution of an order	00 03 04
For drawing and inrolling every decree or dismission, if but one skin	00 16 08
If longer, then six pence per sheet afterwards	00 00 06
For every writ of Execution upon a decree directed to the Sheriff or Coroner	00 06 08
For every exemplification, every skin	00 13 04
The chaft wax	00 00 04
Signing the Dorquet	00 01 00
For enrollment of all patents, Commissions Licenses, Pardons, and other warrants whatsoever which pass the great Seal, after the rate of ten shillings for every skin	00 10 00 the skin
For every Sheriffs Patent, writ of assistance, writ of discharge, Dedimus potest. and the Attorneys Fee	00 13 06
For every writ of Audita querela	00 10 00
For every writ of Scire facias	00 02 06
For a Supersedeas of priviledge	00 03 04
For every Mittimus that passeth the seal	00 03 04
For the transcript after the rate of every skin	00 13 04
For every search	00 00 04
For every Writ of Bastardy	00 03 04
For three Proclamations	00 02 06
For filing every Writ whereby one oath or acknowledgment is received, of the transcript of any record thereby certified	00 01 00
For every Dedimus potestatem, to take an acknowledgment or cancellation of any patent, deed, Indenture or Recognizance	00 03 04
For writing of every Grant, Patent, &c. belonging formerly to the six clarks	00 13 04
For every Liberate and every Allocate	00 04 00
For the enrollment thereof	00 01 08
For all writs of discharge of tenths and fifteenths) for every of them	00 03 04

For every Writ of Supersedeas, for any Parliament-man or his Servant —— 00 03 04
For every writ of expence. Milit,& Burgens— 0 3 0 4
For every Certiorari of course —— 00 01 00
For every Procedendo of course —— 00 01 00

Registers Fees.

For the entring of an Attachment, —— 00 00 02
For entring of a dismission upon the generall order with costs —— 00 00 06
For entring of any other bill of costs taxed by a Master —— 00 00 02
All ordinary rules to make answer, reply, rejoyn 0 00 02
For a rule for publication upon a joynt Commission, or otherwise —— 00 00 02
For the entry of an appearance upon an Attachment Bond or Commandment —— 00 00 02
For the Warden of the Fleet upon every such appearance —— 00 01 03
The entry of every commission to examine Witnesses, ex parte —— 00 00 04
If it be a joynt ordinary commission —— 00 00 08
The entry of every commission to hear and determine —— 00 01 00
The copy of any of these if required —— 00 00 02
The entring of a day given to the Sheriff for returning an Attachment, or to bring in the body upon a Cepi returned —— 00 00 06
The Copy of the Rule, if required —— 0 00 02
For signing such copy of any Rule —— 0 00 02
For a note of a day of hearing —— 0 00 04
For the draught of every Order, decree or dismission, not exceeding one side; and for signing thereof —— 00 01 06
For entry of every such Order —— 0 00 03
If such draught exceed one side, then according to the proportion of 1 s 6 d per side 0 01 06

And

And for entring, after the rate of three pence per side	0 00 03
For any Order, decree or dismission not made upon motion or hearing, but by consent under the hands of the parties Counsell or Attorneys, and for the copies thereof signed by the Register, whereof either side hath one; if it be but one side, the Plaintiff to pay one shilling six pence, and the Defendant to pay the like; and if it exceed one side, then after the same proportion each of them	0 01 06 per side
For the entring of such order, for every side	0 00 03
For copying of any Order entred, Report, Petition, Certificate of Referrees account Cereificate of the chief Clerks being filed	0 00 03 per side
For signing such copy to the Senior Register	0 00 06
For every search for Order, Reports or Petition for each yeare	0 00 02
For a Certificate of no cause shewed, signed, to the Register that signeth the same	0 00 06
For filing of every Report, Certificate, account or award	0 00 02
For every Decree signed by the Lord Chancellor, Lord Keeper, or Lords commissioners, to whom the same is presented by the Register	l. s. d. 0 02 06
For every dismission which he shall procure to be signed	0 01 08
For entring of every cause, Demurrer, or other busines in the paper of causes to be heard by speciall Order or Warrant to the Deputy Register	0 00 06
For entry of any Decrees drawn up and enrolled, whereby any Lands or Lease is decreed or charged with any summe of money, annuity, &c.	0 00 06

For

For a certificate thereof	0 00 06
To the Clerk that files an Affidavit, from party at whose instance it is made (if he come for a copy) for the accompt of the senior Register	0 00 04
For the copy of such Affidavit, for every side, to the same Clerk	0 00 03
For examining and signing such copy to the senior Register	0 00 06

Fees of the Examiners. *l. s. d.*

For the examination of every Deponent, Defendant or delinquent at	0 01 00
For the copies of all depositions and interrogatories, for every sheet containing fifteen lines unwastfully written	0 00 06
For all Certificates upon exhibits	0 00 06
For all other Certificates whereunto their hands are required	0 01 00
For the Exemplification of Depositions, for every skin	0 13 04
For the Examination of any copy of depositions, with the Record which is to be given in evidence in any other Court	0 03 04
For the examination of every deponent, unto whom the Examiner is required to travell out of his Office	0 03 04

THE TABLE.

Attorney, his Office, Oath, and Duty, Pag. 1 2 3 4

Atorney, how he is to take his instructions from his Clients 5

Audita querela, *where it lyeth, and against*

when

whom, 182 183 184 185 186 187 188 189
Assise of Novel disseisin, *and* Mort dancester 200 201 203
Adjournment ought to be by the Plaintiff in the Gager, or else he may be nonsuited 52
Amerciaments and Estreates of them 67 86
Attachment of priviledge for whom it lyeth, and where 69
Action joynt and severall, when 70
Account; instructions upon it, 23
Appearance, instructions upon it 26
How to draw the Declaration 26 27
Action Sur Statute de Hue & Cry, *where the* Ven. fac. *shall lye* 30
Account, where it lieth, & against whom 75 78
Account amongst Merchants by the Stat. 76
Against Collectors 77
Auditors assigned ibid
Amends for trespasse tendred 131
Avowry for damage feasant 137
Assise, process in it 205
Assise, tenant may leave his Plea in Bar, and plead the generall issue 208
Amerciaments to be estreated in the Crowne Office 213
Assurances not perfect, made perfect in Chancery 322
Affidavits, *to what purpose* 375

B.

Baile generall and speciall, and when speciall baile is requirable 41 *Baile*

Bail, Scire fac. *and other proceedings againſt them to anſwer the debt* 42
Bail may be ſued by originall as well as by immediate execution 43
Bail, Teſtatum cap. *againſt them* ibid
Baile common not allowed in a Hab. corp. *be the action never ſo ſmall* 54
Baile ſpeciall in Attachment of priviledge 69
Bayliff, who ſo called 76
Bailiff, what pleas he may plead in Aſſiſe 207
Baile ſpeciall where it may be ſtood upon 285

C.

CHancery de power in giving relief where extremity was uſed, 325, 326, 327, 328, 329, 330, 331.
Chancery proceſſe and proceedings, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349. *Bill, Anſwer, Replication, Rejoynder, and other pleas and proceedings there*, 351, 352, 353, 354, 355, *Joyning in Commiſſion there, the manner of it* 355. *The choice of Commiſſioners* 356, 357. *Depoſition of witneſſes*, 359, 360, 361: *Setting down the cauſe for hearing* 362: *Touching Decrees* 363, *Obedience to Decrees inforced, how* 364, *Bills of Review, where they lye* 365, *Injunctions where to be allowed* 368 369.
Common pleas, the Officers in that Court 234

chiefe Juſtice, Judges, and Cuſtos brevium:
Clarke of the warrants his Office 2
Clark of Eſſoynes his Office 2
Clarke of Outlawries his Office ibid
Clarke of Superſedeas his Office ibid
Clarke of Juries his Office ibid
Chirographer his Office 2
Clarke of the Kings ſilver his Office 2
Clerke of Errours, and Clarke of the Treaſury their Offices, ibid.
Caſe; action upon it, how to proceed in it 24 82 83 84 85 86 37
Coſts for unjuſt vexation 28
Coſts, none upon a nonſuit of an Executor 28
Covenant, actions and inſtructions in it 96 97 Covenant de facto & de jure. 97
Covenant non-maintainable without ſpecialty 97
Covenant upon letter of Atterney 98
Covenant by an heir, where 98
Covenant, the tenor of the Writ and Declaration in it 98 99 Plea 101
Covenant in the County where the deed is made 100
Covenant maintainable by aſſigne of Leſſee, 101
Chancery, proceedings in it, 396 297 298 299 300 301 302 303 304
Chattells reall how to be ſued for in Chancery 315 216

Chattels perſonal, how to be ſued for there 316
Capias, *how to be ſued to an advantage of Outlawry* 9
Capias utlegatum *generall and ſpeciall, their difference* 13
Capias utlegatum, *fees in it* ibid.
Charges in reverſing of an Outlawry 17
Counter-plea of Voucher in Drwer 153
Cape magnum ad valentiam 178
Curia claudenda, *where, and for whom it lyeth* 190 191
Corporation., their titles, and how they are ſtyled in Writs directed to them, 53 56 57 58 59 60, &c.
Circumſtances to matter of fact ought to be taken notice of, when 21
Challenge to the Array, why, 30. *To the pol,* ib.
Conveyances ten manner of wayes 194

D.

Dower, proceedings in it 134
Dower, of what eſtate 144
Dower, of what it ſhall not be 145
Dower, proceſſe in it 147
Dower, Eſſoine in it ibid.
Dower, the Writ in it 148
Dower plea. Ne unques ſeiſe que dower 149
Dower, Non-tenure pleaded, ibid. *Iſſue thereupon* 150
Devaſtavit, *proceedings upon it againſt an Executor or Adminiſtrator* 37

Dutchy Court, proceedings in it 293
Diſcontinuance entred, when 69
Deed intitling to an action muſt be ſhewen 69
Damages, the reaſon of them is to be expreſſed 22
Detinue, how to proceed in it, in what caſes it lyes, and againſt whom 23
Declarations ought to be entred 26
Defendants, when they ought to anſwer 27
Deviſage *pleaded in Bar; where* 71
Debt for not ſetting forth tithes 73
Debt for not filing warrant of Attorney 73
Detinue, where it lyeth. 73 *Judgment in it, conditionall,* 74 *Wager of Law lyeth in it,* ibid.
Debt for arreſting in another mans name without his conſent 73
Diſtreſs, in what it is in generall 123 *of what things it cannot be* 124
Diſtreſs for Rent, ibid. *For damage feaſant* 124 *For an Amerciament in a Leet,* 124 125 *where to be impounded* 125
Diſtreſs grand; infinite, where it lyeth, in what place to be taken 125
Diſmiſſions in Chancery, where 370, 371.

E.

EXigenters their Office and duty 2
Eſſoine in a writ of partition 140
Eſſoine in Dower 147
Elopement pleaded in Dower 151

Esplees, how alleadged 158
Error, how to prosecute a writ to overthrow a Judgement 43
Error, the causes of it to be allowed 44
Error in Execution, where 44 45
Error of the Common pleas judged of by the Upper bench 47
Error of the Upper bench corrected in the Exchequer Chamber 48
Error; no baile is required upon this Writ, but in an action of Debt 48
Essoine in le gager 52
Essoine quashed, where ibid.
Essoine in what actions 53
Essoine, action for it, how to proceed in it, 24 25
Executions, their severall kindes at the election of the Plaintiff 34
Elegit *filed barreth other executions* 35
Elegit Cap. *how far different* 35
Ejectione firme, *the progresse in it* 119 *plea in it; and issue* 121 222
Entry, where it is lawfull 193
Entry; what is to be observed in making of it to effect 195
Ejector; who is he 197 198
Ejectione firme; *of what it lyeth* 198
Exchequer; an account of it as it now stands 268 269
Exchequer Chamber; an account of it 269 270
Exchequer proces, and the charge of them, 271

Exchequer, an under-Sheriff paſſing an account there, the charge of it 272, 273 *charges in paſſing other accounts there* 274

F.

Fllizers, their Office and duty 2
Fees paid by Attorneys at their admitance in Court 4
Fines upon originalls 9
Filing of proceſſe neceſſary 10
Filing of Writs upon their Return, or after, what Fees 11
Fees in Poſt diems *and* Poſt terminums, ibid.
Filing of Writs, omitted is dangerous, where 11 12
Formedon, *where it lyeth, and how to proceed upon it* 155
Formedon, *the forme of the Writ in Deſcender, Remainder, and Reverter* 159
Fine, the forme of ſuing it forth, and the acknowledgment of it: either at the Bar; or by Dedimus poteſtatem 102 103 *Kings ſilver in it* 104
Fine by Dedimus poteſtatem 106
Fine for alienation; what 109
Fine, the charges in it 109 110 *Poſt-fine, how much* 108,
Feme-covert, how her right ſhall be ſued for

With, or without her Baron, 304 305 306 307 308 309
Forma pauperis. *where* 374 375
Fees for making up the Record in Nisi prius, 32 33
Fees at the Assises of Nisi prius 33 *Fees upon the returne of the* Postea 34
Fees due in proceedings in the Common Pleas 201 292 203, &c.
Fees due to the Lord chiefe Justice 201
Fees to the divided 304
Fees to be Puisne Judges 205
Fees due to the Lord chief Justices Clerk 206
Fees due to the Custos brevium 208
Fees allowed by the Custos brevium *to the Clerks of his Office* 209
Fees to the Clerk of the Enrollments 212
Fees to the Chirographer 212
Fees to the Chirographers Clerk for ingrossing of Fines 213
Fees belonging to the Clerk of the Treasury 214
Fees to the Clerk of the Kings silver 215
Fees belonging to the Filizers 216
Fees belonging to the Exigenter 218
Fees belonging to the Clerk of the Jurors 220
Fees belonging to the clerk of the Essoines 221
Fees of the Outlawry Office 222
Fees for the seale of Writs 223

Fees

Fees to the Mariſcall and Proclamator of the Court 224, 225
Fees belonging to the Court-keeper 226
Fees of the Clerks for the inrollment of fines and Recoveries 227
Fees to the Porter of the Court 227
Fees in the Alienation Office 227
Fees taken (though not due) by the Maſters of the Chancery 228
Fees and compoſitions for alienations in Capite 228 229
Fees belonging to the under Sheriff of Middleſex 230
Fees belonging to the Guardian De la Fleet 231, 232, 233,
Fees due to the Prothonotaries of the Common Pleas 234, 235, 236, 237, 238, 239, 240, 241, &c.
Fees due to the Prothonotaries Clerks 246 247 248
Fees due to the Secondaries 248, 249, 250 251
Fees of the Upper Bench; 251 252 254 255 256. *And to all the reſpective Officers and attendants there* 257 258 259 260 261 262 263
Fees belonging to the Marſhall of the Upper Bench 263
Fees in tryalls at the Bar 264

Fees presented by some ancient Clarks to be only due 265
Fees due to Filizers 266
Fees due upon tryals at Guild-Hall *to the Officers of the Court* 267
Fees of Sheriffs in the executing their Office, 275 276
Fees belonging to the six Clarks in Chancery, 380, 381, 382, 383, 384.

H.

Homage Ancestrall 188
Habeas corpus cum causa, 54 *Fees in this Writ* ibid.
Habeas corpora *against the Jury* 31
Habere facias possessionem 119
Homine replegiando, *where it lyeth, and where not*, 127. *Attachment against the Sheriff in this Writ* ibid.
Habeas corpus, *returne upon it* 283.

I

INstructions for an Attorneys drawing Declarations in personall actions, 19, 20, 21.
Jovnture, a Bar of Dower by the Statute, 27 H. 8. 146
Judgment reversed doth not destroy the Plaintiffs action Jour-

Jour, *when neceſſary* 70
Indebitatus aſſumpſit 71
Inſtructions to proceed in Debt upon a Leaſe parol, 19. *Upon an award* 20. *In treſpaſs upon aſſault and battery* ibid. *For impriſonment, breaking a cloſe, and other actions of like nature* ibid.
Imparlance, what, and how many kinds of it 27
Imparlance, the difference betwixt the general and ſpeciall & what is due for the ſpeciall 27
Judgment upon Nihil dicit 29
Iſſue generall, what may be due upon it 29
Jury, whence it ought to come 30
Jury, appeare not full, a Tales *is prayed* 30 31
Judgment in the ſame caſe a good bar to a new ſuit 72
Infant ſues by Guardian 71
Inqueſt upon a writ of inquiry 88 89
Judgment in account is Interlocutory 200
Infant ſues for a thing in Chancery 302
Injunctions in Chancery; Where moſt properly they lye 369 370

L.

LAnguidus in perſona *returned* 68
Limitations for bringing of Actions 72
Latitat, *its forme and nature:* 281. Alias, pluries; *and Bill of* Middleſex 282 283

Latitat *to be renewed* de Novo, *where* 283

M.

Miſpriſions, or any miſtakes in Conveyances of Land; how they are to be rectified in the Court of Chancery 320 321

N.

Nihil returned upon a Scire facias, *what followes.* 16
Nonage pleaded in Bar *of Dower, and iſſue taken* 150
Non ſum informatus *in Dower* 153
Ne admittas, *where it lyeth, and how to proceed in it* 193
Ne recipiatur in ley gager 52
Niſi prius 32
Notice of tryall ought to be given to the Defendants Attorney 88
Notice upon a Writ of inquiry 88

O.

Outlawry, by what proceſſe 7
Outlawry in how many Termes it is effected 8
Ouelawry more ſpeedy upon an action laid in London 10

Out alwry, the charge of it 10
Outlawry reverſed many wayes 14,15,16.
Outlawry reverſed, Writ of Error 17
Ontlawry after Judgment, how ſued forth 37
Fees in it 38

P.

POſt diem. 4 *d why paid* 8
Proceeding anciently, how it was againſt a ſubſtantiall Freeholder 8
Partition, Declaration in it 140
Partition by the Sheriff, in what forme by writ 142.
Parco fracto, *where it lyeth* 192, 192
Procedendo, *where it lieth* 54
Pleas ſpeciall in Com. Banco *ought to be under a Serjeants hand* 29
Prothonotary is to take coſt 34
Precipe *in a Recovery* 113 *Entred where,* 114
Plea in Bar to an Avowry by Guardian in Soccage 134
Plea maintained in a traverſe of a tenure in Soccage 135
Partition, how many waies it may be 138: *The Proceſſe in it* ibid. 139
Priviledged perſons, how to proceed againſt them 376 377

Q.

Quarentina habenda *where it lyeth* 145
Quare impedit, *how to proceed in it, and where it lyeth*, 160, 161. *Forme of the Writ* 162

R.

Returne of an Originall, how 6
Restitution upon Errour allowed where 50
Releaſe of Errors, where it ought to be 51
Returne of the writ of Covenant 104
Replevin - 123 ~~126~~
Returno habendo 127
Recordare 127
Returne of the Sheriff upon a Replevin 129
Replevin *the writ and proceſs in it* 128 131
Declaration in it 132
Reverſall of Outlawry, the charges of it 18
Reconcilement pleaded to Elopement 152 *Iſſue thereupon* ibid.
Refcous, where it lyeth 195 *Declaration in it* 198
Recovery, how to be ſued 111 *with ſingle or double Voucher* 112 *At the Bar* 113 *The charges with two Vouchers in perſon at the Barr*

Bar 117 *The charges in it by ſummons upon warrant of Attorney* 118
Rules to anſwer, where entred, and how 27 28
Riens per diſcent *pleaded* 72
Recognizance, and proſecution upon it 291
References and Reports in Chancery, where moſt properly they lye 271 272

S.

SErjeants of the Coiſe pleaders in the common Pleas 2
Scire fac. ſur generall pardon, *to reverſe an Outlawry* 16
Scire facias *returned* 16
Superſedeas *in Outlawry, the charge of it* 18
Summons ad warrantizandum 178
Scire facias *to renew a Judgment, wherefore, and where it lyeth* 36 37
Superſedeas *in a writ of Error after Judgement and for execution* 46
Summons ad auxiliandum 53
Sheriff amerced for not bringing in the body upon a Cepi 68
Subpæna ad teſtificandum 31
Seiſin, ſufficient to have an Aſſiſe 204
Statue-ſtaple, proſecution upon it 291

T.

Teſte *of an originall Writ may be out of Terme, not of mean proceſſe* 6

Teſtatum *upon returne of a* Capias *in* London 10

Teſte *of an Exigent, and the returne muſt have five County days* 11

Tryall by Proviſo, when and why 31

Teſtatum Capias, *when to be ſued* 35

Trover and Converſion, the proceedings in it 89 90 *And where it lyes* ibid. *Demand neceſſary upon* ibid.

Treſpaſſe of Aſſault and Battery proceedings in it, 91 92 Vi & armis, *in what caſes it lyes* 94 95

Truſts, what they are, where and how ſued for 309, 310, 311, 312, 313.

U.

View in dower, and other reall actions 147 *View may be demanded by the ter-tenant* 35

Ven. fac. *ſpeciall, where* 30

Ven. fac. *to the Coroner, why* 30

Ven. fac. *ſpeciall to be entred upon the iſſue Roll, why* 30

Ven. fac. *how to proceed on it* 31

Upper bench Court, of what it consists, the Processe and manner of proceedings 277 278 279 280 281

Upper bench proceedings like those of the common Pleas, where 287 288 289

W.

WRits originall issue out of the Chancery 5

Warrant of Attorney must be filed the same Terme the Exigent goeth out, else it is erroneous 11

Warrant of Attorney, its forme ibid.

Waste, where it lyeth, and how to proceed in it 165 *What shall be said waste,* 167 168 169 170 171

Waste, the Writ 170. *Declaration in it* 172 *Pleas in it* 173 174

VVarrantia Chartæ, *where it lyeth, the Summons in it* 176

Warranty in Law 177

Warranty, what Lands are lyable to make it good 178

VVarrantia Chartæ, *Declarations in it,* 180

Action acknowledged in it 181

Wager of Law two wayes, 1. Instanter; 2. Ad diem 52

Warrant of Attorney in a Recovery must be before

before the Judges in the Circuits, or elſe before ſpeciall Commiſſioners 114
Writ of Entry; how to proceed upon it 115
Writ of Summons ibid.
Withernam, *where it lyeth, and how* 125
Poſſe Comitatus *in it* 126
Will; how to prove it 292

FINIS.